SOUTH CAROLINA.

John E. McLure to be postmaster at Bishopville, in the county of Lee and State of South Carolina.

ARBITRATION TREATY WITH AUSTRIA-HUNGARY.

The injunction of secrecy was removed January 13, 1905, from an arbitration convention between the United States and Austria-Hungary, signed at Washington on January 6, 1905.

ARBITRATION-TREATY CONVENTIONS.

The injunction of secrecy was removed January 13, 1905, from arbitration conventions between the United States and Great Britain, Portugal, France, Switzerland, and Germany.

ARBITRATION TREATY FOR PECUNIARY CLAIMS.

The injunction of secrecy was removed January 13, 1905, from a treaty of arbitration for pecuniary claims, signed at the City of Mexico on January 30, 1902, by the delegates of the American republics to the Second International Conference of American States.

HOUSE OF REPRESENTATIVES.

FRIDAY, *January 13, 1905.*

The House met at 12 o'clock noon.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE.

A message from the Senate announced that that body had passed the following resolution; in which the concurrence of the House of Representatives was requested:

Senate concurrent resolution 92.

Resolved by the Senate (the House of Representatives concurring), That there be printed in paper covers, at the Government Printing Office, 5,500 additional copies of the annual report of the Commissioner-General of Immigration for the year ending June 30, 1904, with illustrations, of which 1,000 shall be for the use of the Senate and 2,000 for the use of the House of Representatives, and the remaining 2,500 copies shall be delivered to the Bureau of Immigration for distribution.

The message also announced that the Senate had passed the following resolution:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 5359) to amend an act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia," approved June 3, 1896.

The message also announced that the Senate had disagreed to the amendment of the House of Representatives to Senate concurrent resolution No. 91, had asked a conference with the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. PLATT of New York, Mr. ELKINS, and Mr. GORMAN as the conferees on the part of the Senate.

The message also announced that the Senate had passed bill of the following title; in which the concurrence of the House of Representatives was requested:

S. 6057. An act making Sherwood, N. Dak., a subport of entry.

The message also announced that the Senate had passed without amendment bill of the following title:

H. R. 15320. An act to amend "An act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia," approved June 3, 1896.

ENROLLED BILLS SIGNED.

Mr. WACHTER, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

H. R. 1513. An act for the relief of the estate of George W. Saulpaw;

H. R. 6351. An act to pay J. B. McRae $99 for services as hospital steward, etc.;

H. R. 15981. An act to amend an act entitled "An act to authorize the Pearl and Leaf Rivers Railroad Company to bridge Pearl River, in the State of Mississippi;"

H. R. 15606. An act to authorize the county of Itawamba, in the State of Mississippi, to construct a bridge across the Tombigbee River near the town of Fulton, in the said county and State; and

H. R. 15810. An act to authorize Caldwell Parish, La., to construct a bridge across the Ouachita River.

The SPEAKER announced his signature to enrolled bill and joint resolutions of the following titles:

S. 3728. An act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the district of Alaska, and for other purposes;

S. R. 24. Joint resolution authorizing the Secretary of War to receive for instruction at the Military Academy at West Point Luis Bográn H., of Honduras; and

S. R. 78. Joint resolution authorizing the Secretary of War to receive, for instruction at the Military Academy at West Point, Frutos Tomás Plaza, of Ecuador.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

Sundry messages, in writing, from the President of the United States were communicated to the House of Representatives by Mr. BARNES, one of his secretaries.

SENATE BILLS REFERRED.

Under clause 2 of Rule XXIV, Senate bills of the following titles were taken from the Speaker's table and referred to their appropriate committees, as indicated below:

S. 6270. An act directing the issue of a check in lieu of a lost check drawn in favor of W. W. Montague & Co., of San Francisco, Cal.—to the Committee on Claims.

S. 6057. An act making Sherwood, N. Dak., a subport of entry—to the Committee on Ways and Means.

S. 5798. An act to extend the time for the completion of a bridge across the Missouri River at Yankton, S. Dak.—to the Committee on Interstate and Foreign Commerce.

Senate concurrent resolution 92:

Resolved by the Senate (the House of Representatives concurring), That there be printed in paper covers, at the Government Printing Office, 5,500 additional copies of the annual report of the Commissioner-General of Immigration for the year ending June 30, 1904, with illustrations, of which 1,000 shall be for the use of the Senate and 2,000 for the use of the House of Representatives, and the remaining 2,500 copies shall be delivered to the Bureau of Immigration for distribution—

to the Committee on Printing.

Also:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 5359) to amend "An act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia," approved June 3, 1896—

to the Committee on the District of Columbia.

THE PHILIPPINES.

Mr. COOPER of Wisconsin. Mr. Speaker, I ask unanimous consent for the present consideration of the bill H. R. 14623, the Philippine bill, which comes back here from the Senate with amendments. The Committee on Insular Affairs have had it under consideration and report it back with instructions to me to ask for a conference on the disagreeing votes of the two Houses.

The SPEAKER. The gentleman from Wisconsin asks unanimous consent to consider a bill of which the Clerk will report the title, with a view to moving nonconcurrence in the Senate amendments and asking for a conference.

The Clerk read the title of the bill, as follows:

A bill (H. R. 14623) to amend an act approved July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," and to amend an act approved March 8, 1902, entitled "An act temporarily to provide revenue for the Philippine Islands, and for other purposes," and to amend an act approved March 2, 1903, entitled "An act to establish a standard of value and to provide for a coinage system in the Philippine Islands," and to provide for the more efficient administration of civil government in the Philippine Islands, and for other purposes.

The SPEAKER. Is there objection?

Mr. GAINES of Tennessee. Mr. Speaker, just a moment. I want to ask the gentleman in charge of the matter to what extent and why the metric system has been adopted for the Philippines? We have the matter now pending before the Coinage Committee, in its relation to this country, and there has been a great deal of opposition to it. Now, as we are Americanizing those islands, I should like to know why it is that either the House or the Senate has injected that system into this bill.

Mr. COOPER of Wisconsin. Mr. Speaker, that matter can not go into conference, because it has been agreed upon by the two Houses; but in reply to the question of the gentleman from Tennessee, I will say that that amendment was made upon the urgent recommendation of the Philippine Commission. The arbitrary substitution of our system of measurements over there, in a country that for three hundred years or more has been accustomed to nothing except the metric or Spanish system, would lead to endless confusion, and they wish to have the right to continue the use of what 99 per cent of the people in the islands are accustomed to, and only accustomed to. But be that as it may, the amendment has passed both Houses and is not now a proper subject of conference.

The SPEAKER. Is there objection?

There was no objection.

Mr. COOPER of Wisconsin. I move that the House non-concur in the Senate amendments, and ask for a committee of conference on the disagreeing votes of the two Houses.

The motion was agreed to; and the Speaker announced as the conferees on the part of the House, Mr. COOPER of Wisconsin, Mr. TAWNEY, Mr. CRUMPACKER, Mr. JONES of Virginia, and Mr. MADDOX.

ORDER OF BUSINESS.

Mr. SULLOWAY. Mr. Speaker, under the rule certain matters on the Private Calendar are in order for to-day. I ask unanimous consent that to-morrow may be substituted for to-day.

The SPEAKER. The gentleman from New Hampshire asks unanimous consent to substitute to-morrow for to-day for consideration of bills on the Private Calendar relating to pensions. Is there objection?

There was no objection.

Mr. LITTLEFIELD rose.

The SPEAKER. The Chair will say to the gentleman from Maine that there are two or three minor matters that probably can be disposed of in five minutes, if the gentleman will yield.

Mr. LITTLEFIELD. That is entirely agreeable, Mr. Speaker, as far as I am concerned.

CLERK TO COMMITTEE ON ENROLLED BILLS.

Mr. HILDEBRANT. Mr. Speaker, I present the following privileged report on House resolution 385:

The Clerk read the resolution, as follows:

Resolved, That the chairman of the Committee on Enrolled Bills is hereby authorized to appoint two additional clerks to said committee, to be paid out of the contingent fund of the House at the rate of $6 per day each for the remainder of the present Congress.

The question was considered, and the resolution was agreed to.

REPRINT OF H. R. 7041.

Mr. BATES. Mr. Speaker, I ask unanimous consent for the reprint of the bill (H. R. 7041) relating to liability of common carriers by railroads in the District of Columbia and Territories and common carriers by railroads engaged in commerce between the States and between the States and foreign nations to their employees.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent for the reprint of House bill 7041. Is there objection? [After a pause.] The Chair hears none.

AMENDMENT TO SECTION 858 OF THE REVISED STATUTES, RELATING TO THE ADMISSIBILITY OF CERTAIN EVIDENCE.

Mr. PERKINS. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 13772) to amend section 858 of the Revised Statutes of the United States.

The SPEAKER. The Clerk will report the bill.

The Clerk read as follows:

Be it enacted, etc., That section 858 of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"SEC. 858. The competency of a witness to testify in any civil action, suit, or proceeding in the courts of the United States shall be determined by the laws of the State or Territory in which the court is held: *Provided, however*, That no witness shall be excluded in any action, suit, or proceeding on account of color."

The following committee amendment was read:

Strike out the following words, beginning on line 9: *"Provided, however*, That no witness shall be excluded in any action, suit, or proceeding on account of color."

Mr. WILLIAMS of Mississippi. I would like to ask the gentleman from New York what change that amendment makes.

Mr. PERKINS. It makes no change in the law. The Committee on the Judiciary thought that the provision should be retained in the general statute, which refers to the color, and that it ought not to be put in this.

Mr. STEPHENS of Texas. I would like to have the bill read.

The SPEAKER. The bill has been read, and the Clerk will read the amendment.

The Clerk again read the amendment.

Mr. STEPHENS of Texas. Mr. Speaker, I would like to inquire whether that is not the law at the present time?

Mr. PERKINS. It is the law at the present time, and for that reason the amendment was offered by Mr. DE ARMOND, of the Judiciary Committee. This being a general provision, it was thought not proper in a special bill to amend this one section of the statute, to add on that provision. It was thought to be unnecessary, and, because unnecessary, it was not desirable.

Mr. STEPHENS of Texas. I think it should go out, and I have no objection.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was accordingly read the third time, and passed.

On motion of Mr. PERKINS, a motion to reconsider the last vote was laid on the table.

IMPEACHMENT OF JUDGE SWAYNE.

[Mr. LITTLEFIELD addressed the House. See Appendix.]

Mr. PALMER. Mr. Speaker, I yield such time as he may desire to the gentleman from Massachusetts [Mr. POWERS]. Before he begins, I would like to inquire how much time has been consumed on the other side and how much time has been consumed on this side.

The SPEAKER pro tempore. The gentleman from Maine [Mr. LITTLEFIELD] has consumed four hours and twenty-five minutes, and the gentleman from Pennsylvania, Mr. PALMER, has consumed one hour and forty minutes.

Mr. POWERS of Massachusetts. Mr. Speaker, this House has been entertained and instructed by two very able speeches. One was made by my friend the gentleman from Pennsylvania [Mr. PALMER] and the other by my friend the gentleman from Maine [Mr. LITTLEFIELD]. The former filled for years, with credit and distinction, the great office of attorney-general for the Commonwealth of Pennsylvania, and the other gentleman filled, with equal honor and distinction, the great office of attorney-general in his own State. These gentlemen have carefully studied the evidence before the House in this impeachment proceeding, and it is entirely evident from the speeches that they have made that they have reached diametrically opposite conclusions upon all the articles but three. I am reminded of the story that they tell of the jury that came in and reported a disagreement. The court criticised the jury, saying that they ought to agree, that there had been a careful trial. The foreman then arose and said: "Your honor, how can you expect this jury to agree upon the evidence when the opposing lawyers who have given months of study to the question could not agree upon the evidence?" So I say, Mr. Speaker, that when these two distinguished gentlemen reach diametrically opposite conclusions it is well for us to undertake to determine for ourselves what this case really is. I regret, Mr. Speaker, that the gentlemen who have spoken to this House have shown a little too much zeal and a little too much partisan spirit in the discussion of a great judicial question. I can not but feel that this House under the debate, so far as it has proceeded, has proceeded under a misconception of its present duty. Now, what are we considering at this time? We are certainly not considering the question whether Judge Swayne ought to be impeached, because we have considered that question already and we have voted upon it, and this House stands committed to the proposition that Judge Swayne ought to be impeached. Why, Mr. Speaker, on the 13th day of December, after debate, after careful examination of the evidence—and the evidence before the House at that time was exactly the same evidence which is before the House at the present time—the House reached the conclusion that the resolution of impeachment ought to be voted, and we appointed a committee, and that committee notified the Senate that we had passed the articles of impeachment. At the time we gave notice that we had voted to impeach the respondent we notified the Senate that we would in due time present to them articles of impeachment.

Mr. PALMER. Mr. Speaker, I ask for order.

The SPEAKER pro tempore (Mr. CONNER). Gentlemen, this matter under discussion is one of great importance and it is due to those who desire to hear that they should not be disturbed by those desiring to converse. We must have order, and gentlemen not desiring to cease their conversation will please retire to the cloakroom.

Mr. POWERS of Massachusetts. After the notice given by this House to the Senate we voted a resolution for the appointment of a select committee of seven to complete the pleadings in this case, and that committee having performed its duty has made a report. We have reported twelve articles of impeachment, twelve distinct charges, twelve counts under the indictment.

Now, what is the purpose of the debate at the present time? Is it for the purpose of determining whether or not Judge Swayne is guilty and ought to be impeached? We have passed upon that question already, and we are now to determine the form of trial which is to take place before the proper tribunal ordained by the Constitution. In other words, we have met in conference for the purpose of determining what shall be the form of the pleadings under which trial shall proceed. I assume that every gentleman present will agree that those pleadings ought to be in such form as to afford a fair trial both to the petitioners and the respondent, and I assume that every gentleman present will agree that those pleadings ought to be in such form as to deter-

mine the important question being agitated in this controversy between the people of the United States and Judge Swayne. More than that, Mr. Speaker, we are not called upon at the present time to discuss. Now, when the resolution was voted we did not undertake to pass upon any article of impeachment. A great majority of this House—a majority so large that a division was not called for—voted the resolution of impeachment, and they did that, I assume, upon the printed evidence then before the House, and that is the only evidence properly before the House to-day. Now, some of us may have voted in favor of impeachment because of the contempt cases; some of us may have voted for impeachment by reason of the nonresidence charge; some of us may have voted for impeachment by reason of the charge with reference to the appropriation of the property of the bankrupt railroad; others may have voted on account of the false certifications. Now, I care not what particular part of that evidence influenced the vote of Members of this House. This House said, by a large majority, that the evidence contained in this volume justified the passage of the resolution of impeachment. Now, suppose it should appear, and that is a probable case——

The SPEAKER pro tempore. Will the gentleman suspend a moment? A personal request has been made by your presiding officer to have gentlemen refrain from conversation in the Chamber. There are those here who desire to hear this discussion, and I ask of you, gentlemen, that you will accord to the speaker the hearing to which he is entitled. [Applause.]

Mr. POWERS of Massachusetts. Now, suppose it should appear that there is not a majority of this House in favor of any one article before it. That is, suppose it should appear that a majority of this House think that the respondent ought not to be impeached on the nonresidence clause, ought not to be impeached upon the false certification clause, and ought not to be impeached on any one of the twelve articles now before the House. Now, suppose we reach that conclusion. Where does that leave us? It leaves us in the position of having impeached Judge Swayne and of depriving him of the right of trial. Because that trial can not go forward until these pleadings are completed. Now, would that be fair to the respondent; would it be fair to the petitioners, and the petitioners are the American people? On the other hand, are we not committed to to the proposition of framing such pleadings as shall try the important issues in the controversy? Well, now, your committee in making this report reached the conclusion that there were five important matters of controversy, and we took those five matters and we covered them by twelve different articles. Now, it is a fair question before this House as to the form of these articles, that is the question of pleadings, and everybody of this House, the House being committed to impeachment, of course is anxious that the pleadings should be in proper form, and I assume that every Member of this House is anxious that the trial, if a trial is to be had, shall be a fair trial by which the great subject of controversy between the people and the respondent shall be fully at issue with the opportunity for the Senate to determine upon all those great questions of controversy. I agree, Mr. Speaker, that we might properly perhaps have brought before the House other subjects upon which there was evidence, but to my mind we have brought before this House the five matters of the largest importance. Now, suppose that it should appear after discussion and vote that this House decides in favor of the first three articles and no other. I would like, Mr. Speaker, to have this House consider what position it would be in in that event. In other words, we decide that the respondent shall go to trial upon those three articles which relate to the false certifications of expense. Well, now, you bear in mind, Mr. Speaker, that the piece of evidence upon which that charge was founded was discovered by accident during the investigation.

It has never been a question of controversy between the people of the northern district of Florida and Judge Swayne. It was something that was discovered in the course of the investigation as it went forward. In other words, if we adopt those first three articles and reject all the others, we go to trial upon issues which have never been agitated in the State of Florida. What kind of a position does that leave us in?

Mr. LACEY. Is not the logical result of the gentleman's suggestion that we ought to have had these articles brought in and have agreed on some of them before impeaching at all? In other words, has not the committee put the cart before the horse? For instance, one-fifth of all the House is in favor of the impeachment on one item and four-fifths are against it; one-fifth are in favor of impeaching on the next item and four-fifths are against it, and so on clear through, followed by a unanimous vote in favor of impeachment, but divided up into five sections, the House against impeachment on nine of them. Now, is not that the difficulty in which the committee involves us by bringing proceedings in this form, and should we not have the specific charges voted on before formally impeaching before the bar of the Senate?

Mr. POWERS of Massachusetts. The answer to that, Mr. Speaker, is that the committee has followed exact precedents—the precedent in the Peck case has been followed in this case—and apparently the precedents have been the same in this country as in Great Britain as to method of proceeding; and when we have an impeachment trial of a judge only once in seventy-four years it becomes pretty important to follow precedents, and that is what we have done in this case. Now, I do not agree with my friend from Iowa [Mr. LACEY] that the present situation in any way embarrasses us. We have voted that upon that evidence Judge Swayne ought to be impeached, and, therefore, we have voted impeachment. Now, the only thing we are attempting to do is to frame articles which are in the nature of pleadings, or, if you please, counts under an indictment, by which the great questions of controversy out of which has grown this impeachment, in consequence of which the House has voted this impeachment, shall be put in proper form.

I think, Mr. Speaker, that this House will agree that we owe that to the respondent, and that we owe that to the petitioners, because I take it that Judge Swayne has never asked my friend from Maine [Mr. LITTLEFIELD] or my friend from California [Mr. GILLETT] to undertake to shut out a hearing upon those four important matters which are covered by the nine articles of impeachment beginning with article 4. If Judge Swayne is to go to trial he wants to be tried upon the great questions in controversy which have arisen in his own district. He does not want to be tried upon a question which no more affects the people of his district than it affects the people of my judicial district in Massachusetts. If he is to be tried at all, he wants to be tried upon these questions which have been agitating the people of his district for many years.

Now, it strikes me, Mr. Speaker, that what has embarrassed this House in this debate is the fact that the committee taking this testimony saw fit to extend that generous treatment which it did extend to the respondent. You will bear in mind that the respondent was not entitled to give evidence in this ex parte hearing. He was not entitled to be represented by counsel, and in no case can you find in the impeachment trials of this country where a respondent was ever permitted to go before a grand jury that was framing an indictment and attempt to persuade them from framing the indictment which was under consideration. That was not the case of Pickering, who was impeached, nor the case of Peck, who was impeached, and it is not the usual case in the criminal procedure of this country.

And yet my friend from Pennsylvania [Mr. PALMER], my friend from Alabama [Mr. CLAYTON], and my friend from California [Mr. GILLETT], who made up that select committee, being fair-minded men, said, "We will give the same opportunity to the respondent as we give to the petitioners." So he appeared by counsel. He gave evidence and they permitted him to file letters that he had received from people, letters which he had received long before there was any discussion or agitation over this question in his district. He filed letters of recommendation, letters which were written to President McKinley. He was allowed to say that he had been recommended for a position on the Supreme Bench of the United States. He was allowed on two occasions—and I think on three—to make long speeches before the committee, and the committee treated those speeches as evidence. Why, I never heard of such generosity before toward an accused, and the very fact that they permitted the respondent to do that has involved this House in a controversy as to whether he is guilty or not. I think that the committee attempted to do too much. They attempted to perform not only the duty imposed upon this House, but they attempted to perform the duties imposed upon the Senate. In other words, they undertook to determine whether he was guilty on these several counts, and they heard, I think, quite as much testimony from the respondent as they heard from the petitioners.

Now, the effect of that was it has thrown into this House a debate upon the merits, something that was never contemplated in impeachment proceedings, and so my friend from Maine gets up and says the respondent says so and so. The respondent was permitted to give an explanation of why he did this thing, and he was permitted to explain his conduct years after he had taken action upon this thing and that. And yet in spite of all that my zealous friend from Maine makes a speech running through something like four hours, and by insinuations and innuendoes charges the committee with being unfair to the respondent. Why, the fact is we, who represent the people of the United States, have the right to criticise this committee for

having treated the right of the petitioners in the manner in which they did. If there were no evidence before this House except that which came from the petitioners, do you suppose this House would hesitate for a moment upon any of the articles now under consideration? The very reason why we do hesitate is because the committee has brought before this House evidence from witnesses they had no right to examine in an ex parte proceeding of this kind.

I do not propose, Mr. Speaker, to go into a discussion of the merits of this controversy. I take this position, and I ask the Members of this House to carefully consider that position and see whether or not I am right. I take the position that the only question before this body is putting the pleadings into proper form. I take the position that this House has no right to pass upon the question whether Judge Swayne is guilty or innocent under any one of these articles. It is purely a question of probable cause, and upon the evidence submitted we have arrived at the rational belief that the resolutions of impeachment are justified. I, for instance, have reached that conclusion, I will say, upon the contempt charges; some other Member has reached it upon some other charge; but the body as a whole has said that the entire evidence justifies the impeachment, and the House has voted impeachment.

Now, the duty of this House is to so frame the pleadings that the important charges and allegations contained in the evidence shall be in a proper, regular form, so that the respondent and the petitioner may have a fair trial before the Senate of the United States.

Now, Mr. Speaker, with all seriousness, I ask this House if there is any other question before it. Why, you may take the Peck case—I was looking at it only this morning—and after they voted the impeachment they got together as to the form of the articles, and they discussed amendments as to the articles, but they did not discuss the merits of the articles; and you will find that to be the same in the Pickering case; and you will find it to be the same in the Belknap case, which was the last case of impeachment tried before the Senate.

We have started off upon an entirely different plan. We have undertaken to try, and my friend from Pennsylvania in his argument was undertaking to prove, that upon all this evidence respondent was guilty upon every charge. My friend from Maine undertook to prove that he was not guilty of nine of these charges, and then said he had doubt about the charge which he had reported in favor of some time ago. Why, if we are going to discuss the merits of this case, I do not imagine that there will be any revision of the tariff at the present session. If this debate is to go on in an unlimited manner, so that Members may make speeches of four and five hours, and that every man may state his own views——

Mr. PARKER. Will the gentleman permit an interruption?

Mr. POWERS of Massachusetts. I yield to the gentleman from New Jersey.

Mr. PARKER. Does not the gentleman think that the four hours spent by the gentleman from Maine were well spent in elucidation of the evidence?

Mr. POWERS of Massachusetts. In reply to that I will say that if the question before this House is the guilt or innocence of the respondent upon all these articles, it is well spent; if it is not the question before this House, it is thrown away.

Mr. PARKER. Is it not a fair thing to discuss whether a man may honestly be charged with different things—different things alleged to be crimes and misdeameanors? We all know that different things did not come up in either the Peck or Belknap case. Was it not in each a single thing—in the Belknap case the taking of money, and in the Peck case for contempt in one case?

Mr. POWERS of Massachusetts. In the Belknap case several reasons, and in the Pickering case one.

Mr. PARKER. Of the same character?

Mr. POWERS of Massachusetts. Why, substantially the same character. The difference in the case of Pickering, I assume, was the difference between intoxication on the bench and when he failed to protect the right of some client by reason of refusing him a fair trial. It seems as if that was rather somewhat different. [Laughter.]

Mr. COOPER of Pennsylvania. Mr. Speaker, do I understand the gentleman to say that this is the only instance in which a defendant has been given the right to be heard?

Mr. POWERS of Massachusetts. I know of no other instance.

Mr. COOPER of Pennsylvania. Do you know whether or not the right was refused in any other instance?

Mr. PALMER. Yes; certainly.

Mr. POWERS of Massachusetts. I will not undertake to say whether application was made and refused. I think this is the first case where the accused person ever had the assurance to appear by counsel and ask to be heard before what practically amounts to a grand jury.

Mr. COOPER of Pennsylvania. The gentleman will recognize this, that the precedent whether or not the accused had the right to be heard by counsel would establish the views of this body upon the trial of cases of this kind, if they had been refused.

Mr. POWERS of Massachusetts. I believe we are bound to consider the evidence that is before us.

Mr. COOPER of Pennsylvania. Is not this an extraordinary remedy that is being sought by the people here?

Mr. POWERS of Massachusetts. It is the remedy which is provided by the Constitution. The Constitution provides that every judge shall hold his term of office during good behavior. Now, the only way by which you can test the question whether he has been guilty of bad behavior is by an impeachment trial. Take the case of a lawyer. If a lawyer is guilty of misbehavior, he is summarily disposed of and disbarred by the court. If a judge holding a tenure of office, such as a Federal judge holds, is guilty of misbehavior, the law permits the people to have that misbehavior examined only in one way, and that is by an impeachment proceeding.

Mr. COOPER of Pennsylvania. What I wish to get at is this: If this is an extraordinary remedy, does it not place upon the people who are seeking this remedy the burden of establishing their case?

Mr. POWERS of Massachusetts. It certainly does.

Mr. COOPER of Pennsylvania. Then, does it not require more than the establishment of a probable cause, which I understand your position to be?

Mr. POWERS of Massachusetts. I doubt if it requires any more than what is called a "probable cause." I do not see why a judge should stand in any different position than any other citizen upon the question of crime. In other words, all that we are bound to show is probable cause that the accused is guilty of the offenses charged in the different articles. That has been stated in another way. It was stated in the Peck case that what the House should find was that the evidence justified a rational belief that he was guilty.

But let me say in connection with this, that when this case reaches the Senate it is not to be tried upon the same testimony that has been presented before this House. There is no part of this testimony in the form in which it now is that can be used in the Senate. It will be determined upon new testimony, oral testimony. Different witnesses, possibly witnesses entirely outside of those that testified here will testify there and testify orally. The only question for us to make up our minds on is what pleadings are necessary.

Mr. GAINES of West Virginia. Will the gentleman from Massachusetts yield to me for a minute?

Mr. POWERS of Massachusetts. Let me finish this sentence and then I will be glad to. Having voted the impeachment, what pleadings are necessary in order to give a fair trial upon the important questions in controversy. I will now yield to the gentleman from West Virginia.

Mr. GAINES of West Virginia. I would like to ask the gentleman whether he or the committee have given any attention to the effect on this impeachment trial if it should not be concluded in the Senate before the 4th of March? Does an impeachment determined upon and entered upon by one Congress continue upon the expiration of that Congress? And if the Senate, proceeding to try this case de novo, hearing all the evidence, perhaps going into more detail than this House, should not have time at this session or before the 4th of March to conclude the hearing or reach any determination, what would be the effect?

Mr. POWERS of Massachusetts. I will say to my friend from West Virginia, that my understanding of the law is that whenever the respondent is once before the Senate, he is before what is known as the impeachment court, and that court continues until the trial is completed; and the change in the Senate which will take place on the 4th of March in no way affects the court as it is constituted to try it. It is true that new members may come into that court, and when they come in, if they have not taken the oath, they must take it; but that constitutes a court and continues as a court until the trial is completed. That is my understanding.

Mr. GAINES of West Virginia. If the gentleman will permit me, there seems to me to be no question that the court continues, for the Senate is a continuing body; but suppose, for instance, the House appoints certain managers to present the articles of impeachment. The managers appointed by the present House may not be Members of the next.

Mr. PALMER. Then the House will appoint some more.

Mr. GAINES of West Virginia. Can the action of this Congress bind the succeeding one? I am asking only for information.

Mr. POWERS of Massachusetts. I will say to my friend that my understanding is that if there should be any managers appointed at this session of Congress and the trial should not be completed and the managers should go out, then this House may appoint other managers to take their place, just the same as if you start a trial and your district attorney gets removed or dies in office, the next district attorney takes it up and carries it on. I think that is the situation.

Mr. OLMSTED. Will he gentleman permit me to interrupt him for a moment?

Mr. POWERS of Massachusetts. Certainly.

Mr. OLMSTED. Not for the purpose of embarrassing or taking issue with him at all, but for information. I quite agree with the gentleman that the House having voted for impeachment, the proper question now before it is as to the proper framing of the articles of impeachment. I expect to vote for most, and perhaps all, of these articles submitted, but there is one of them concerning which I have some question, and it is as to that that I wish to ask the gentleman from Massachusetts.

The fourth article charges that said Charles Swayne having been duly appointed, etc., did unlawfully appropriate to his own use without making compensation to the owner a certain railway car, and that it was provisioned, etc., and that he took that car and provisions under a claim of right for the reason that the same was in the hands of a receiver appointed by him.

Now, in the first place, I labor under the impression, gathered somewhere in this record, that the receiver was appointed by Judge Pardee, but I am not sure that I am right. Further, it seems to me that the evidence shows that he did not at the time appropriate this car violently or forcibly under a claim of right, but the evidence shows, on page 502, that the receiver sent it to him at his own instance—that is, the instance of the receiver.

Now, there is some evidence that ten or twelve years afterwards, the judge being asked about that, did say that he thought he had a right to use it because it was in the hands of the court, which had charge of the receiver. Is it entirely accurate and fair to the judge to say that he appropriated at that time that car and provisions under a claim of right? In other words, ought not that particular article to be framed somewhat differently, so as not to do the judge any injustice, which neither the gentleman from Massachusetts nor any member of the committee would desire to do?

Mr. POWERS of Massachusetts. I think my friend from Pennsylvania raises a pertinent question, and that is as to the form of pleading. That is what we are here for. I do not understand that he raises the question as to the merits of that article.

Mr. OLMSTED. I think it was improper for him to use the car, and particularly the provisions paid for by the receiver, knowing, as he must have known, that when the reciever's account came before him it must include the expenses of the provisions and the car. I think that is as improper as it would have been if a hotel had been in the hands of a receiver and he had taken his family and stopped at the hotel without compensation. But, at the same time, I think the article ought to be so framed as not to misstate the facts or to do the judge any injustice.

Mr. POWERS of Massachusetts. Of course, in the evidence of Judge Swayne which came before the committee he claimed that he had a right to appropriate to his own use—that is, to make use of for his own personal benefit—the property of the bankrupt railroad company by reason of its being in custody of his court. I understand my friend from Pennsylvania to say that the word "appropriate" is not the proper word as a mere matter of pleading, and that perhaps the word should be that he "accepted without right the property of this road and used it for his own benefit when tendered to him by the receiver who was an officer of his court."

Mr. OLMSTED. Yes; if at the instance of the receiver he accepted and made use of the car and provisions, knowing that the expense thereof must appear in the receiver's account, the article would be satisfactory to me.

Mr. POWERS of Massachusetts. I think there is a good deal of force in the position of the gentleman from Pennsylvania, and when it comes up at the proper time, it is a proper matter for amendment. It has not been my purpose, Mr. Speaker, to go into the merits of this controversy, for the very reason that I believe that we have settled the question of the merits so far as this body is concerned. I want briefly, however, to take up one feature of this debate which, to my mind, is hardly worthy of the House. It is the partisan spirit that is being shown both on this side of the House and on the other side of the House. The great body of the membership of this House are lawyers, many of them have held judicial positions, and a number of them have been attorney-generals of their States.

We are sitting here as a grand jury, or, as has been stated, as the grand inquest of the nation, to settle simply a question of pleading, and I am very sorry that yesterday, and to a certain extent this morning, there came into this debate what would appear to be partisan feeling upon the part of one side or the other.

Mr. WM. ALDEN SMITH. Mr. Speaker, I have heard the gentleman from Massachusetts [Mr. POWERS] say two or three times that we are bound by that vote a few days ago. Now, I do not understand it so at all. In fact, if we are sitting as a grand jury, we have the same right that the grand jury exercised in Oregon a few days ago when they made an indictment and withdrew it a few days afterwards.

Mr. POWERS of Massachusetts. Had they filed the indictment with the clerk of the court at the time they withdrew it?

Mr. WM. ALDEN SMITH. Just a moment. I do not know of any rule of res adjudicata that should apply to this House. We have a right to reconsider this matter if we desire to. We have a right to take it up de novo if we want to.

Mr. POWERS of Massachusetts. There has been up to the present time no proposition to take it up de novo. There is no evidence before the House now that was not before the House when we voted the resolution of impeachment. I concede that men in this country have a right to change their minds; but this is not a tariff question; it is not a currency question. It is a question of law, and we settled this after a debate, and some extended debate, by a very decisive vote. Now, having settled it, we then went to the Senate and reported our action in voting that resolution.

Mr. WM. ALDEN SMITH. But some of us did not vote with the gentleman at all before, and are we bound by his vote?

Mr. POWERS of Massachusetts. Let me finish, and then I shall be glad to yield. We went to the Senate and said to the Senate that we had passed the resolution of impeachment. In other words, we filed our action with the Senate. Now, I do not undertake to discuss the question whether we have a right to rescind our action of December 13. I do not know. This is the first proposition that has been made to rescind it. It is rather a remarkable case when every member of the Judiciary Committee believes in impeachment, with the exception of my friend the gentleman from California [Mr. GILLETT], and he believed in impeachment on December 13——

Mr. PARKER. No, sir.

Mr. POWERS of Massachusetts. But of course he has a right to change his mind.

Mr. PARKER. Will the gentleman allow me an interruption?

Mr. POWERS of Massachusetts. Allow me to make my statement and then I will yield. It appears that on December 13 every member of the Committee on the Judiciary and a very decided majority of this House believed that the resolution of impeachment ought to be voted. Now, if anyone has changed his mind since that time, he must have changed it upon a consideration of the same testimony that was before the House on December 13.

Mr. PARKER. Will the gentleman permit an interruption?

Mr. POWERS of Massachusetts. Now I yield.

Mr. PARKER. I entirely contradict the statement of the gentleman that at the time of the adoption of that report I or those with me believed that an impeachment ought to be voted. We did report that as to one matter—the certificate of expenses, unexplained—there was ground of impeachment. Mr. Speaker, I think it fair to the gentleman from Massachusetts [Mr. POWERS] to give him notice in brief of the position that I take. I say we reported that, unexplained as to motive, the certificates given at that time were grounds of impeachment, if false. There are many offenses which are indictable for which the grand jury does not indict, and I rose in my place here in this House in that debate when the previous question was moved in order to tell this House that it was within its wise discretion, looking at the practice which seems to prevail among different courts of this Union with reference to that statute, to say as to whether impeachment should be ordered.

Mr. POWERS of Massachusetts. Is this a question?

Mr. PARKER. I am giving the gentleman notice, I have already stated to the gentleman.

Mr. POWERS of Massachusetts. I yield to any privilege under the sun.

Mr. PARKER. I have already said to the gentleman that I

thought it was fair to him that I should make a short statement of my position, so that he could answer me, as he is upon that point. I shall likewise at the point—

Mr. GILBERT. Mr. Speaker, will the gentleman from Massachusetts allow me to ask him a question?

Mr. POWERS of Massachusetts. I don't know whether I have the floor.

Mr. PARKER. Oh, the gentleman has the floor.

Mr. POWERS of Massachusetts. Very well. If the gentleman from New Jersey will yield to my friend from Kentucky to put a question, I should be glad, for the gentleman from New Jersey now has the floor.

Mr. PARKER. Oh, I can not very well do that. I have not the floor. I am simply giving notice that I shall likewise insist before this House that where different crimes and misdemeanors were alleged it was the duty of the House to have voted whether each class of matter reported was impeachable before debating that resolution of impeachment, and that the committee was entitled to the vote of a majority on each branch, and that now for the first time the real question of impeachment has come before this House to be determined—not by five men on one charge, fifteen on another, and twenty on another coming in generally and saying that for one or another of the charges Judge Swayne should be impeached, but on each particular branch of the case.

Mr. POWERS of Massachusetts. Mr. Speaker, I now yield to the gentleman from Kentucky [Mr. GILBERT].

Mr. PALMER. Why do not you answer the question of the gentleman from New Jersey [Mr. PARKER]?

Mr. GILBERT. I do not want to interfere with the line of the gentleman's argument, but I want to know this: You have two or three times disclaimed any desire to discuss the merits of the controversy, and you couple with that proposition another one that the only purpose of this grand jury or this House is to properly formulate the items. Now, how are we to intelligently formulate the items without an intelligent comprehension of the testimony? For example, the proposition is presented to the House whether or not we shall impeach him upon the charge of $10 a day. Gentlemen voting "aye" on this testimony support that contention, and so with the other charges, so do not we necessarily have to discuss the testimony?

Mr. POWERS of Massachusetts. Mr. Speaker, that is a very fair question, and I assume that we had considered the testimony when we voted the resolution of impeachment. At that time the committee urged the impeachment upon five grounds, and those are the only grounds which are covered by the articles, and it was upon those five grounds and upon no other that the committee making the report urged the impeachment, and we had assumed that when the House voted the impeachment they practically said that a probable cause was made out in these five subject-matters which were discussed before the House.

Mr. GILBERT. But the gentleman from Massachusetts on that occasion said that that was not the proper time to discuss the merits of the case.

Mr. POWERS of Massachusetts. I do not think I made that statement. I said this was not the proper tribunal to discuss the merits; that the question of guilt or innocence must be determined by the trial tribunal and that this was not the trial tribunal.

Now, I want to just make a little reply to my friend from New Jersey, who has asked me a question and, as I understand, has served notice upon us——

Mr. PARKER. I simply stated what my position was.

Mr. POWERS of Massachusetts. I understood him to say it was not quite fair for me to say that he favored the passage of the resolution of impeachment. I wish to call his attention to the report which is signed by him, RICHARD WAYNE PARKER being the name at the head of it——

Mr. PALMER. Written by him?

Mr. POWERS of Massachusetts. I judge by the excellent English in which it is written that it was written by my learned friend from New Jersey. This closes with the following language:

As a witness—

Referring to Judge Swayne—

he answered and explained every other charge—

Meaning every other charge except the charge of false certification—

This charge he made no effort, as a witness, to answer or explain. The inference from the record, on general principles, is that the charge is admitted to be true, and that he has no answer or explanation thereto. Whether a satisfactory explanation can be made we do not say. We must take the record as it stands.

Upon this record, unanswered and unexplained, we are of the opinion that in this particular an impeachable offense has been made out.

Now, I understand we have not the benefit of any testimony that was before us when my friend from New Jersey wrote that report. I do not understand that any explanation has been made by the respondent, and I do not understand if my friend from New Jersey has changed his mind upon what he has changed it. He has not changed it upon any explanation made by the respondent which appears in any official record or is properly before this House. If he has made an explanation in some other way through the press which has satisfied my friend that he ought not longer to continue with this report, that may influence him, but ought not to influence us.

Now, I want to say just this in closing, because I do not propose to occupy very much more time. You have here a unique and very peculiar situation. This is the first impeachment trial in seventy-four years. For three-quarters of a century the judges of this country have so conducted themselves as to meet with the approbation of the bar and suitors in their courts. Not a single dissent has come here from all these Federal districts throughout this country except the northern district of the State of Florida. For ten years an agitation has been going on in that district. The legislature of Florida, voicing the sentiments of the people of that State, have voted by an almost unanimous vote in favor of memorializing Congress for the impeachment of this respondent. If I mistake not, they have passed that vote twice, once several years ago and once in 1903.

Now, it is claimed by some of my good friends on this side of the House that back of this agitation is politics; that the very fact, which is admitted, that Judge Swayne came from a Northern State, that he was identified with the Republican party and sent down into Florida, is one of the causes of the dissatisfaction which exists in his district. I have examined that rumor somewhat carefully; I have examined that charge because I have heard it made off the floor of this House, and I have reached the conclusion that there is no foundation whatever to it.

Ever since the civil war we have been sending from the North good lawyers, and some lawyers not as good, to hold positions as Federal judges in the Southern States. To-day a large number of the judges in the South come from the North and vote the same ticket that I vote. Judge Swayne refrains from voting, but most judges vote. So far as I am able to discover there is absolute harmony to-day between the bar and the people of the South and those judges that went down from the North years ago to accept positions in the Federal courts of the Southern States.

So far as I am able to learn, politics have nothing to do with this controversy. I have great respect for the bar of the South. Ever since the days of the Marshalls and Pinckneys and Wirts the bar of the South has been an honorable institution, representing an honorable profession. [Applause.] I think it is fair to say that the reputation of the southern lawyer compares favorably with the reputation of the lawyers of the other sections of the Union. But when you find in a State a situation such as exists in Florida, it is not singular that there is more or less partisan spirit. It is not singular that that agitation in Florida should permeate the State of Florida and permeate a great part of the southern section. Let me suppose, Mr. Speaker, a case. Let me suppose that in Massachusetts we had a Federal judge who was distasteful to the bar and distasteful to the people, so that there would be agitation continued for years as to the question of his removal, and let me suppose that the legislature of Massachusetts voted by a substantially unanimous vote in favor of memorializing Congress for his impeachment. And suppose that every one of the delegation from Massachusetts upon this floor came here charged by the instruction of the general court of the Commonwealth of Massachusetts to present articles of impeachment. Do you not think that that situation would be likely to generate partisan spirit among us in Massachusetts? And would not that partisan spirit extend through all the States of New England and would not my friend from Maine [Mr. LITTLEFIELD] and my friends from Massachusetts be here talking in a language somewhat familiar to the language of the Representatives of the State of Florida? Why, it seems to me——

Mr. DAVIS of Florida. Mr. Speaker, will the gentleman permit an interruption?

Mr. POWERS of Massachusetts. Certainly.

Mr. DAVIS of Florida. I wish to say to the gentleman from Massachusetts [Mr. POWERS] that, as one of the Representatives from Florida, I thank him for what he has kindly said of us.

I desire to say, further, that we have two Federal judges in my State, one for the northern and the other for the southern district. They are both northern men and both Republicans. The judge of the southern district is James W. Locke, and there is no man in Florida more honored, more loved, and more

respected by the people of that State than Judge Locke. [Loud applause.]

Mr. POWERS of Massachusetts. I thank the gentleman from Florida for his statement concerning the matter. It covers the situation which I assumed existed in the South. I have talked with lawyers upon the floor of the House, and I find that that situation exists in nearly all the States of the South.

Mr. GILLETT of California. Will the gentleman permit me to ask him one question?

Mr. POWERS of Massachusetts. Certainly.

Mr. GILLETT of California. Will you state the opinion of the lawyers in Pensacola and in the northern district of Florida concerning the character, integrity, and industry of Judge Swayne prior to the O'Neal contempt proceedings? I want you to state the opinion of the lawyers and the citizens of the northern district of Florida concerning the industry, morality, and honesty and integrity of Judge Swayne prior to the O'Neal contempt.

Mr. POWERS of Massachusetts. I think the evidence clearly shows, Mr. Speaker, that this agitation has been going on for years; that the Florida legislature long before the O'Neal contempt proceedings had voted in favor of the impeachment of Judge Swayne.

Mr. GROSVENOR. Will the gentleman permit a question?

Mr. POWERS of Massachusetts. Yes, sir.

Mr. GROSVENOR. Is it not a fact that after that original and first resolution the State Bar Association of Florida passed resolutions strongly supporting Judge Swayne?

Mr. PALMER. For what?

Mr. POWERS of Massachusetts. I understood that they recommended Judge Swayne for some position that would take him out of the State. [Laughter.]

Mr. GROSVENOR. Will not the gentleman be frank? Did they not commend him for his great ability, honesty, and integrity?

Mr. POWERS of Massachusetts. There is published in the report of the hearings a large number of letters from lawyers in Florida——

Mr. GROSVENOR. But was not that the action of the State Bar Association?

Mr. POWERS of Massachusetts. I have not seen the recommendation from the State association, but I have seen letters from lawyers recommending him for a position on the Supreme Bench.

I do not undertake to say, to be perfectly fair, that Judge Swayne has not his friends in Florida; but they are not at the bar. There is no gentleman here who does not believe that there is a great controversy going on in that State, and that it is such a controversy respecting the respondent that it destroys the usefulness of the judge in the circuit for which he is appointed. That it became so was evidenced by the entire body of the people speaking by resolution passed by the legislature, and it has become a question that deserves, as it has received, and as it will continue to receive, the careful consideration of this House.

Now, I do not assume for one moment that the respondent in this case wants to have this House pass upon the merits of this controversy. Suppose we passed upon them; it is not a vindication of the respondent. Suppose we declined to indict him upon this charge or that. That is not a vindication of the respondent. If the position of the respondent and his friends be correct, he desires a trial upon all these great questions under controversy—the contempt case, the appropriation of the property of the railroad, the nonresidence case, and the false certification case. It is the duty of this House, not only to the people of this country, but also to the respondent, to say that he has a right to be tried fairly upon proper pleadings upon all these questions of controversy, and if we fail to send these up to the Senate and to give to the people of America a right of trial upon these issues and to give to the respondent the right of a fair trial upon these issues, we fail to do our duty. We stand here pledged to see, after the passage of this resolution, that there is a fair trial so far as the pleadings are concerned, and no man will do his duty who seeks to prevent a trial upon the great questions of controversy which to-day are not only agitating the people of Florida, but are interesting the people of every State in the Union.

We have the right to be proud of our judiciary. They have never asked us to protect them. They ask for no protection. Now, the American people have never sought a controversy with that great arm of our Government—the judiciary. They have come here at this time, to us, and we have said that they were entitled to a fair trial. That trial to be fair should be a trial before the greatest court which can be constituted in the United States, on pleadings which shall show the intelligence and fair-mindedness of this House; and you and I, Mr. Speaker, will be satisfied, as will the American people, with the result and the verdict of that trial. [Loud applause.]

Mr. PALMER. I yield such time as he may desire to the gentleman from New York.

Mr. PERKINS. Mr. Speaker, in view of the full argument that has been made by the members of the Committee on the Judiciary, I should say nothing at this time were it not for the fact that I am not a member of that committee. The House must have seen that in this investigation a certain ascerbity of feeling has grown up in the committee—a certain partisan bias has naturally developed on one side or the other. We all desire, Mr. Speaker, to cast a fair, intelligent, and conscientious vote on this question. I never heard of Judge Swayne—I never heard Judge Swayne's name until I heard it in these proceedings in this House.

I never saw Judge Swayne. I knew nothing of the feeling in Florida, and I have endeavored conscientiously by reading every word, I believe, that is contained in this book, to qualify myself to cast a conscientious vote; and I have thought that a few words may be of assistance to many Members of the House who, like myself, knew nothing of the situation and want to do the thing that is right. So, very briefly, I shall state to the House some of the reasons that will guide me in casting my vote. To show that I do not speak in entire accord with the Committee on the Judiciary, I will first say that I do not take the position of my friend, the gentleman from Massachusetts [Mr. POWERS], who has just spoken. He said that we are bound by our vote; that we were only here now as a grand jury to frame articles of indictment. That is not my position. I believe that I am here to vote conscientiously on the question of whether or not I think Charles Swayne ought to be impeached.

If on reading this evidence I think he ought to be, I am bound to vote that way. If on reading this evidence I think he ought not to be, certainly I ought not to vote for his impeachment on any article. And, having reached the result that I think he should be impeached, then I do not care one straw whether I think the Senate will impeach him or will not impeach him. We have each of us to vote upon our own conscience, responsible to the people that we represent, as to whether we think the man is a fit man or an unfit man to be a judge, and if I think he is a man unfit to be a judge, it does not matter if I believe that every one of the ninety Senators of the United States will vote for his acquittal, I will not so vote in this House.

Now, Mr. Speaker, there is another thing to be considered. This man holds an office of great dignity and importance. He is one of the few men who hold office in the United States of America for life.

Nobody, President, people, nothing but the act of God Almighty can take him from his office so long as he fills it with good behavior. He holds an office of great responsibility, as any judge does, to decide the issues justly and fairly that are presented before him. He has great power by which he can do as Judge Swayne has done, commit men for contempt, or sentence one of his fellow-citizens to jail or to punishment—a power possessed by no one else, not even by this House of Representatives, unless a man refuses to answer a question before us.

Now, Mr. Speaker, where there is great power, where there is great diginty, there should be great responsibility. When we pass upon the question of good behavior of a judge of the United States, we have a right to demand a high standard.

I shall not discuss all these questions here. I wish to say a few words on one subject, because it produced upon me as a lawyer the strongest impression as to Judge Swayne. It was not what was said by others, but what Judge Swayne himself said and what Judge Swayne has done through a series of years that convinced me he was a man unfit to hold this office.

What have we a right to ask of a man who sits to administer the law? First and foremost, that he shall himself scrupulously, religiously, and honorably obey the law. He sits to punish criminals who disregard the provisions of the statutes. I will not vote that a man who has himself, as I believe from the words of his own mouth, for years evaded a statute of the United States is a fit man to continue to administer the law. And I am going to call the attention of the House only to what Judge Swayne said himself; not to one word of evidence that was given by any other man.

The statute says that a judge of a United States court shall reside in his district, and it is an unusual statute in this respect, that it contains the provision that if he fails so to do he shall be guilty of a high misdemeanor. Judge Swayne and every judge of the United States who assumes that office has notice

in the very wording of the statute that this is not only a thing that he is bound to do, but that if he fails so to do he is guilty of the very thing for which a judge can be impeached, a high misdemeanor.

Judge Swayne was a United States judge in Florida, and he was living in St. Augustine, in his district. The boundaries of the district were changed, and it became necessary for him to remove from St. Augustine and go into the northern district. There is no doubt that that law was distasteful to him. He did not want to move. It may have been a partisan law; it may have been passed by a Democratic Congress with an idea of getting rid of him. I do not know and I do not care. It was the law of the land which he had sworn to administer.

Mr. PALMER. You are referring to the change in the boundaries of his district?

Mr. PERKINS. Yes; it rendered it necessary for him to change his residence. Now, let me read what he says. In my consideration of this case I had read down to that point and I had said, "There does not seem to be a very clear case against Judge Swayne;" but when I struck that statement I made up my mind that that man was an unfit man to be a judge. What did he do when the bill was passed changing the limits of his district, which made it necessary for him to move to Pensacola or somewhere else? He said:

My friends told me, Democratic friends told me, that they thought the next Congress would change it back; that there would be a Republican Congress and it would change it back.

It is as plain as the ceiling above us that for two years he had no thought and took no step about changing his residence. Why? Because he believed a Republican Congress would change the boundaries again. What would have been done if a man had been brought before Judge Swayne charged with a violation of the revenue law, and that man had said, "Oh, I did this, but I thought in two years a Democratic Congress would come in and repeal that law." Would Judge Swayne have pardoned him? Would he have dismissed him on that account? Are the gentlemen within the sound of my voice, Republicans or Democrats, willing to say that a man is a fit man to fill the office of judge who for two years knowingly violates the law of the land, a statute which to violate is a high misdemeanor, because he thought it would be changed back and it did not suit his convenience to move?

Now, let us go further. It was not changed. What did he do? Why, to talk about his being a resident of his district, I say, with great respect to my learned friend from Maine [Mr. LITTLEFIELD], is nonsense.

He had no home there, he had no family there, he did not vote there, and he did not pay taxes there. What did he say before this committee? He says: "Oh, I regarded myself as a resident." And this judge of the court has the effrontery to produce as evidence of his residence the fact that he went up to Pensacola and stopped at a tavern and wrote his name, "Charles Swayne, City." [Laughter.] The intention is to be considered, but, Mr. Speaker, there must be facts. The intention as to residence is regarded by the law as characterizing a man's act. I can not say that I intend to go to Pennsylvania and by that declaration become a resident if I stay in New York. If I go to Pennsylvania, then my intention is evidence of whether I intend to leave New York, whether I have left temporarily or permanently; but this man did no act, he took no part or place in the State of Florida, certainly until 1901, and I think not until 1903. For five or seven years, it makes no difference which, he was no more a resident of Florida in the eye of the law than I was a resident of Florida.

The courts have passed upon this question and in a case out in Utah the court said that this provision of residence meant an actual residence. Of course it does. It is not the nominal residence which sometimes determines a man's right to vote, but it is an actual residence, so that a litigant without trouble and loss of time, or loss of money, can find a judge ready at his hand; and the court says in interpreting this same statute, or a similar statute:

It is clear that residence means an actual as distinct from a constructive residence, and the law directing a district judge to reside within the district was manifestly not made—

This is what Judge Swayne forgot—

was not made for his convenience, but for the benefit of the people whose servant he was.

Now, Mr. Speaker, what does this judge, sworn to administer the law, say about this charge? Why, he comes in and says "I never heard that anybody was injured by my not being there."

Mr. Speaker, can a man be fit to administer the law who, when he himself has evaded it, says, "Oh, I don't know that it did any harm." It is the plea of every criminal—of men very much lower in the scale than Judge Swayne—"Oh, I didn't comply with the law, but I don't know that it did any harm." Is he a fit man to sit as a judge who has the effrontery to come before this committee and, instead of seeking in every way to show that he was a resident, an actual resident, say, "Oh, I don't know that it did any harm; for nine long years, or for seven long years, I was only in the district of Florida sixty days out of a year, but I don't know that it did anybody any harm."

One thing more and I am done with this part of the case. He says, "I spoke to two or three real estate men," in his attempt, if it can be called an attempt, to show that he was seeking a residence there—"I spoke to two or three real estate men and they didn't find a house to suit me." Is it an excuse for a judge for five long years to violate the law which says that he shall be a resident of the district, to say that two or three times "I spoke to a real estate man and I didn't find what suited me?" His duty was to be there; his duty was to be suited. Oh, Mr. Speaker, when he thought that he could safely evade the law, he found no house to suit him. He never would have found a house to suit him if it had not been for these proceedings. When these impeachment proceedings were finally started——

Mr. GILLETT of California. Will the gentleman allow me an interruption?

Mr. PERKINS. Certainly.

Mr. GILLETT of California. The gentleman said that he found no house to suit him until these proceedings were begun. Is it not true that he found a house in 1900 and moved in with his family and his furniture?

Mr. PERKINS. Well, assuming that; he was not a resident there for six long years. Perhaps the mutterings of the storm were heard even in 1900. For six long years he had violated the law, and he then found a house. There is no statute of limitations here. A man is impeached because his outward conduct shows the lack of inward grace. He will again do wrong when it is safe. I understand it is claimed, and that is my understanding of the evidence—the gentleman from California is much more familiar with it than I am—that in 1900 he was there only a few days, and it was a pretence of residence.

Mr. GILLETT of California. That is not the evidence.

Mr. PERKINS. Well, you may call it 1900 or 1903. The mutterings of the storm came, the impeachment was started, and until that time Judge Charles Swayne found no house to suit him. He was like the criminal lower down in the scale, who proceeds so long as he thinks he can do so with impunity, and when the officers of the law are after him he seeks to reform.

Now, Mr. Speaker, that is not the sort of man who is fit to hold the office of judge. Just one word more and I will be through. There are two things more that I desire to say as characterizing the manner of man he is. If I thought he was a fit man for judge, God forbid that I should vote against him, and if I think he is an unfit man, certainly I shall not vote for him. I care not what his politics may be. When the controversy was up on the question of the drawing-room car, Judge Swayne said, "Yes; I appointed ten receivers of railroads," and this phrase struck me, and I call it to the attention of the House. "I have appointed receivers of ten railroads." I come from a State where there are many applications for receivers of railroads and of other things. I know the class of judge, and every lawyer in actual practice knows the class of judge who has many applications for receiverships and that sort of work.

Some twenty-five years ago we impeached two judges in New York State, Barnard and Cadoza. They had appointed more receivers and done more work of this sort than any other ten judges in the State of New York. There is a class of judge to whom attorneys of a certain class apply and to whom people who wish to be appointed receivers run promptly. This class of people evidently thought Judge Swayne was their man, and it is curious to notice that judges of that sort, who are sought after to appoint receivers, are generally the judges we find accepting favors from receivers; the men who are sought for to put their friends in those positions are the men who themselves we presently find riding in drawing-room cars at the expense of the receivers. There is just one thing more I wish to speak of that also characterize the man. The gentleman from Pennsylvania [Mr. PALMER] spoke about the proceedings for contempt. The gentleman from Maine [Mr. LITTLEFIELD] occupied hours in arguing whether or not those proceedings were wholly justified.

I have practiced law all my life in the State of New York among judges of high standing, judges who uphold the honor and dignity of their courts better than men like Judge Charles Swayne could ever do. I have never known a case—though I have sometimes known of cases of lawyers being rebuked by the court for some improper act or speech—where the judge of our

supreme court of the State of New York found it necessary to commit lawyers to jail and to fine them, and to seek to strike them from the roll of attorneys.

Those are the things, Mr. Speaker, that in connection with all the rest are important as showing that the man is not fit, is not qualified, to be a judge, that he is not conducting himself with that good behavior which, and which alone, gives us the right to leave him in office. Mr. Speaker, I have finished what I have to say. I feel, and I am sure we all feel, that we are sitting here as jurors in a case of the people of the United States against Charles Swayne. If I believe he was fit to hold his office, surely I would vote against these articles. If I believe this evidence shows that he is unfit to hold the great office of United States judge, then I will vote as I shall vote. I will do what I can to remove from the bench a man who has brought dishonor on it. [Applause.]

Mr. PARKER. Mr. Speaker, there are some advantages in waiting for the closing of a case, but there are advantages also in speaking to you now, when you are ready to listen to what I have to say.

This is, unfortunately, the first time that the real questions on the impeachment of Charles Swayne have come fairly before this House. I say this advisedly. Impeachment is to be ordered for high crimes and misdemeanors. The House that sends the impeachment to the Senate must see good cause—I do not say "beyond reasonable doubt" or use the words "probable cause." They must see good cause for each of the charges that they send to the Senate. Generally, there is but one charge. In the Belknap case it was charged in several items that money had been taken on public contracts.

In the Peck case there was but one charge as to a single punishment for contempt. In such cases the House can rightly and justly vote simply on the question of impeachment, for there is but one alleged misdemeanor. But in the present case, besides some ten other charges mentioned in the specifications, which carried a vote of the Florida legislature, there are five which have survived to this day, namely: As to the Belden and Davis contempt, the O'Neal contempt, residence, the certificates for expenses, and the use of private cars. Three other matters were urged before the House in the majority report and on the motion for impeachment, namely, the matters of the Hoskins bankruptcy, the younger Hoskins contempt case, and alleged favoritism to Tunison (see Appendix A, Abandoned Charges). These last were vigorously supported by arguments, now abandoned, that Judge Swayne had conspired to ruin the elder Hoskins's business, driven the younger Hoskins to suicide, and unjustly favored Mr. Tunison. We can not tell how many votes were divided among these eight issues. The vote on impeachment decided nothing as to any one of the alleged crimes or misdemeanors. My friends were divided. Some relied on one cause, some on another, each opposing the opinion of the others, whether on residence, expenses, private cars, or the various alleged abuses of the power over contempts. Some of my friends lay stress on the private car, others think it a mere courtesy done years ago.

Some of my friends believe that the action of the judge on the Belden contempt was a clear case of usurpation, while others think the judge was absolutely justified. My friend from Massachusetts, who spoke last from the Judiciary Committee, I believe, has nothing to say on the matter of the certification of expenses, believing that the judge when he certified may have done so without evil intent, following a supposed judicial custom. On the other hand, he asserts that the O'Neal case was the worst thing of all, while others believe that as to O'Neal the judge did only his duty and that there is no possible ground of impeachment except on the charge as to certificates for expenses. Even on that charge the question of intent should be solved by every man according to his best judgment and conscience, and there is no evidence as to intent. I repeat that the vote taken on impeachment was not a majority vote against Judge Swayne on any one of these charges. That majority was made up of some who believed in one charge and some who believed in another. No majority of the House has determined that they believe the respondent guilty of any one of these different matters.

Gentlemen tell you that the House is bound, and that the House would stultify itself if it voted against these charges. Mr. Speaker, if there be any stultification in the action of the House it was in taking a single vote, throwing together things which have nothing to do with one another, and this resulted from the earnestness and zeal—honest, but mistaken—of the leaders of the majority of this committee, for when I rose in my place to speak on this matter, as a member of that committee, and asked that the motion for the previous question should not be pressed, intending to ask this House to vote separately on the various necessarily separate branches of those charges, I was made to sit down, and the motion for the previous question was insisted on, and the House thus took a vote that does not determine any one of the questions, but leaves them all open separately. Thus we are now forced to determine for the first time whether a majority of this House, upon any one of these matters, will bring a charge of high crime and misdemeanor against a judge who has held for years an honorable position, not only by his office, but with the bar and in the community.

From pages 225 to 238 of the record we learn that in 1899 the lawyers and business men of Pensacola were eager to sign certificates as to his honor and integrity; not, as suggested, to get him out of Pensacola, but to make him judge of the circuit court for the fifth circuit, to preside over the courts of northern and southern Florida, as well as that of Georgia, Alabama, Mississippi, Louisiana, and Texas. The law firm of Liddon & Egan signed such a certificate, though Judge Liddon says he did not do so personally, and this is the same Judge Liddon who was employed by O'Neal in 1903 to draw the resolutions for the Florida legislature and press them against Judge Swayne, and who is counsel against him now. Judge Swayne was acceptable to the bar. He served in districts of Alabama, Louisiana, and Texas (as by the certificates, p. 437) for some seven hundred and forty-five days in eight years. This was but a part of his work. In 1903 he was two hundred and two days in the southern district of Florida, besides one hundred and thirteen days in his own (pp. 214, 215). We have yet to hear the slightest complaint except from Pensacola, as to the satisfactory quality of his temper, honor, and judicial ability in the trial of cases in these courts, extending the whole range of the Gulf States, from Florida to Texas.

Mr. Speaker, we are told this man is unendurable and a tyrant. One gentleman has chosen to say, a common thief. I protest. We stand here, Mr. Speaker, with the functions of a grand jury before our Maker, on our oath to determine severally as to the several and different matters alleged by a majority vote of this House whether impeachment shall be pressed on each or any particular ground. There is no law to bind us to any rule, whether it shall be on probable cause or beyond reasonable doubt. It is sufficient that you and I must answer on our honor and our oaths whether we find it our duty to impeach him on each several charge. A majority of the House must answer upon each charge, because the Senate has to determine upon each charge, and the House must impeach upon each separate charge, in fairness to the man and in fairness to itself. When we were asked to vote upon ten charges at once, that there was something impeachable contained in one or the other of those charges, we have already perhaps stultified ourselves in the mode of our procedure, but the previous question, as it was then ordered on motion of the chairman against the protest of a member of the committee, is responsible for that mistake.

I am speaking longer than I expected. It is perhaps time not wasted. I once tried an impeachment in my own State, and its trial upset legislative deliberation for four or five weeks. Whatever time is spent here in winnowing the true from the false is time well spent. Would that it had been done earlier! My friend from Massachusetts [Mr. POWERS] does not even admit that it was for the benefit of the House that it has had the careful, exhaustive, and truthful presentation of the evidence by the gentleman from Maine [Mr. LITTLEFIELD]. No one can add to that presentation. But I have something to say on each matter as to the effect of that evidence.

First, as to residence. Judge Swayne, when appointed in 1889, was and had been for years a resident of Florida. He established himself with his family at St. Augustine. We do not know anything about his financial affairs. Three thousand five hundred dollars was his salary till 1891, and $5,000 since. He seems to have had little else, for the banks carry his note for $200. Such a salary leaves little to spare for wife or family. He had a mother who lived on the old homestead, in Delaware, where he spent his summers. He did not travel much or indulge in luxuries, and got his board at hotels as cheaply as he could. Those of you who have tried to live on $5,000 a year I will ask whether it was easy for a judge to live on $3,500 a year, even at the place where he established his family in eastern Florida, where it is healthy in summer, and whether he would have means to move the family instantly to western Florida on the Gulf. He left his family at St. Augustine in 1894, 1895, and 1896.

Mr. Speaker, the statute provides that the judge shall reside in the district for which he is appointed. St. Augustine was in that district for which he was appointed, and his family stayed there, close by, and he himself established his residence in Pensacola, where he meant to go, by registering in the hotel, staying there or at a neighboring boarding house whenever

there was work to do, and he also ordered his name to be put upon the registry roll. Gentlemen ask how often he was there.

Mr. HENRY of Texas. I would like to interrupt the gentleman a moment. I understood him to say that the statute says that the judge shall reside in the district for which he is appointed, and the gentleman's contention is that he resided in St. Augustine when he was appointed?

Mr. PARKER. Yes, sir.

Mr. HENRY of Texas. That he must continue to reside there forever if the district should be changed?

Mr. PARKER. No; I do not; but I say that there was no moral obliquity in his keeping a residence which he had taken up under that statute until he could, with convenience, get another residence.

Mr. HENRY of Texas. Does the gentleman then assert that he should have removed his residence to the new district?

Mr. PARKER. I think he should have removed, and I think he did remove, but I think the circumstances were peculiar. He had a district composed of counties, a list of which I have here, which contained, in 1890, 128,626 people only, and contained, in 1900, 176,337 people only, not enough for a single Congressional district; but they depended upon him to do work in——

Mr. HENRY of Texas. Does the gentleman from New Jersey [Mr. PARKER] think that that is an answer to a positive statute?

Mr. PARKER. I am not saying that is an answer.

Mr. HENRY of Texas. I am trying to understand the gentleman from New Jersey.

Mr. PARKER. I have said to the gentleman from Texas [Mr. HENRY] that he had a reasonable time in which to remove. I have said likewise to the gentleman that he did move by going there. I have said now that he was not required by court business to remain there as much as he would have had to remain in some other district, I mean in attendance upon court. This is not on the question of residence. This is on the question of employment. Thereupon, having little work to do—you can count the cases in that district on your fingers, as given in the Attorney-General's report—he was assigned by the circuit judge and sent from place to place for important and onerous work, so that he did not seem to be in Pensacola as much as he would have been if he had not been taken away or had had business there to do.

Mr. HENRY of Texas. Will the gentleman allow me to ask him just one question?

Mr. PARKER. Go ahead.

Mr. HENRY of Texas. Do you hold that he became an actual resident of the new district as created by Congress?

Mr. PARKER. Yes; and I explain his absences as not inconsistent with complete residence. Judge Swayne himself explains carefully on pages 578 to 580 that he understood that he must reside in his district; that he went to Pensacola and registered in the hotel as of that city; that he kept it as his home; that he looked around for a house; that he finally got one in 1900, and that his wife, his family, and furniture have been there ever since, for four years.

No statute of limitations binds the House of Representatives or the Senate. No statute binds them. But this matter of residence is purely a statutory crime and misdemeanor. There is no moral obliquity if the judge only does his work in his district. The offense is purely statutory. A statute created it and a statute can limit it, and this limitation is imposed in the strongest terms, terms that would seem to apply to impeachment itself. Section 1044, Revised Statutes, provides:

> No persons shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 1046—

Which covers revenue and slave-trade cases—

> unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed.

But whether the statute applies or not, impeachment will not be made on stale matters not involving moral character.

For four years he has resided in Pensacola beyond question. Before that time no one ever complained of his absence. No objection was ever made until long after his having a family home at Pensacola. He had always been there at every term—the number of his attendances are in the record—and for four years he has been living there in the midst of those people.

The House is asked to go back of four years and to find an impeachment because over four years ago he did not live there. No complaint was made until a man named O'Neal was punished in November, 1902, for murderous assault on an officer of the court, and O'Neal had resolutions lobbied through the Florida legislature, employed five several lawyers, and ran the impeachment attacks upon the judge from 1902 till his death. I do not think the House is going to trouble itself with a charge of nonresidence over four years ago, or that impeachment is intended for matters that do not affect the moral character of the man or his present fitness to do his work. There are sound reasons for limitations as to indictment. Old matters may be made instruments of revenge, and they take the time of the courts, juries, and people over questions that are past and on which time has passed and wherein evidence may be hard to obtain. These reasons apply with tenfold force when the Senate and House of Representatives are to give up public business in order to become court or prosecutor on an attempt to disgrace an honorable United States judge for a crime and misdemeanor which was never such in intent, if it existed at all, and which certainly has failed to exist for over four years.

Mr. Speaker, what has been just said as to length of time applies with tenfold force to the question of the use of the private car in 1893, eleven years ago. In principle we may not believe in the prevailing practice as to the use of passes or private cars, but while it lasts we may follow it honestly and use a pass. A man's conscience can not be brought down to any one single fixed rule as to the kindlinesses that prevail between man and man. A dear friend may give a thing of value which may not be given by or accepted from a stranger. The cigar or the meal or the wine or the entertainment will be taken from one man and refused from another. Each man's conscience must say in the special case where the line is to be drawn. In this case a receiver of a railroad in the year 1893, over ten years ago, had a private car—a private car that was not for hire and never brought a dollar to the railroad company. It was the car of the president of the railroad, maintained as such presidents' cars are always, by keeping a porter in it and ready for use by the president in traveling over the road. It is part of the necessary and usual means for the operation of a road. It is explained by Mr. Axtell, who was the lawyer of the road. Durkee, the receiver, is alive, but sick, and unable to appear.

Dearborn was the conductor on that car on one of the two trips. But nothing was heard on this matter until this fall, when a witness named Wurts came here after the original report was made. He had been a defeated candidate for Judge Swayne's office. He said that when he was in Florida, previous to 1895, he heard that Judge Swayne had been continually using a private car to come down from Delaware, and that Judge Swayne had admitted it to him, and that the judge was corrupt with reference to railroad management.

Now, the real facts are clear. Durkee, as receiver, had this private president's car. It goes free not only over that road but over all roads, because the car of the president of one road goes upon all other roads with free transportation. When the receiver found that Judge Swayne wanted to go to California, he appeared to have offered him the car to go to California, and the judge went to California and returned in that car with free transportation, but he furnished his own provisions. There happened to be in the car some little liquid, whether apollinaris or something else we do not know. We can only appeal to the record, which has proved Judge Swayne's expenses at half a dozen hotels, and there is not a single drink included. We must conclude that Judge Swayne is not a drinking man or we would have heard of it in this case.

He provisioned that car; he accepted the loan of his friend's house, you may say; he accepted the courtesy from the railroad of the use of that car. It cost the railroad nothing. It was, as was said, better running than standing still.

Now, this is not a thing that we commend. We have criticised it as at least unwise and tending to provoke criticism. But it is something that may and must be left to each man's conscience what courtesies of that sort he may accept. And, as pointed out by the gentleman from New Jersey [Mr. MCDERMOTT] yesterday, the accounts of all these matters have been audited, have been displayed in the courts, no objection has been made, and the stockholders and directors must be taken to have assented, and it is done. Now, the other and second case is simpler yet. In the same year, 1893—for there were only two instances of use of the private car—we find in the testimony of Mr. Axtell, who was the counsel of the road, a description of how it came to go to Delaware, and it is a case that might happen to anyone. In this case Mr. Axtell says:

> Q. There has been testimony here of the receiver's car being sent for Judge Swayne and his family to Delaware. Was that while Mr. Durkee was receiver?—A. Yes, sir.
>
> Q. Was it within your knowledge at the time?—A. It was.
>
> Q. Do you know at whose instance it was sent?—A. The receiver sent it at his own instance.
>
> Q. Within your knowledge?—A. Well, he told me so at the time. It came about in this way: Judge Swayne was at Guyencourt, I think, with his family, and was about to return to Florida in the fall, and Major Durkee, the receiver, suggested that he would send the car to Delaware for Judge Swayne to return, and he made application to the various roads to pass the car from Jacksonville to Delaware and return. The car was passed without expense to the receiver or to the railway property.

Q. Was or was not that car kept by the receiver for his use as the manager of the road?—A. Yes, sir. It was a car that came into his hands when he took charge of the property, and was used by the officers of the road—that is, the executive officers. They had another car used by the subordinate officers, and the receiver always used that car when he used any. And I will say there was no hesitation on the part of the receiver to ask other roads to transport these cars, because in the winter time there is scarcely a day that that road did not haul the private cars of other roads without compensation, as it is customary to do.

Here is a judge at his home in Delaware, who is going down to Florida, and he is notified that the private car of the receiver is coming up to Guyencourt, or is on the way, to take him down with his family when he wants to go. It is a courtesy to him, and he accepts it as a gentleman. Does it alter his position as a judge? Does it alter his action, or was there anything corrupt about it?

I feel like saying to myself, as well as to the rest, if it comes to a question of receiving things as courtesies which are sometimes of value, "Let him that is without fault among you cast the first stone." But this transaction is dead. It is back in 1893. It was not put in the original specifications; it was not a part of the case before the Florida legislature; it was not brought in here as part of this case, but it came from a disappointed candidate for office, on the new testimony, after the report had been brought in. This House, like a grand jury, will wipe that charge from existence. We may not defend it; we may think there is too much private-car travel; that there are too many passes, and that an enlightened public conscience, or perhaps the action of the railroads, will stop this thing in the future and change our system. We are not defending it, but we do say that I can not accuse a man of moral obliquity in such an action as this.

Mr. THAYER. Will the gentleman allow me an interruption?

Mr. PARKER. Certainly.

Mr. THAYER. Is it not a fact that that whole railroad was constructively in the hands of the court itself when it was in the hands of the agent of the court, the receiver, and is it not a fact that the court has got to pass on the debit and credit as kept by the receiver of everything received in and paid out for that railroad? And what does the gentleman say of the propriety of a judge accepting this donation from the receiver when he, the judge, was to pass on his account?

Mr. PARKER. I think that that cost about $20.

Mr. THAYER. Well, that might vary. Isn't there a distinction between that and a railroad corporation giving free transportation to a judge from one place to another? In this case the receiver was the agent of the judge.

Mr. PARKER. I do not know; we look into the intent upon these things. One thing must still be greatly dark—the motive, why they do it—if it were done honestly, as many another man has taken friendly favors from friends, no matter what the relations were. A lawyer is employed by one man, and then may rightly become attorney, not in the same case, against his former client. Each man must keep himself upright in motive, though doing things in this world that may vary from one time to another. We should not hasten to condemn another's motive in a matter of this sort, which everybody seems to have thought right until this disappointed candidate for office came in on the tail of this case and put in these extra charges, which are now put first in the indictment, so that the dog comes in tail first instead of head first. [Laughter.]

Mr. STANLEY. Will the gentleman from New Jersey permit a question?

Mr. PARKER. Certainly.

Mr. STANLEY. I believe the gentleman has said that this private car cost about $20.

Mr. PARKER. I said that was probably the cost of the provisions.

Mr. STANLEY. It went up to Delaware and got Judge Swayne.

Mr. PARKER. The car was never rented.

Mr. STANLEY. That car made the trip to carry Judge Swayne from one place to the other?

Mr. PARKER. The car went up with the porter and brought him back.

Mr. STANLEY. Would $20 have carried that car through any one of the States? Would $20 have furnished fuel for the train through any of the States over which he passed?

Mr. PARKER. Not a dollar was paid for the car. It was done as a courtesy from one railroad company to the other.

Mr. STANLEY. Was not the car drawn by an engine?

Mr. PARKER. Yes, it was drawn by an engine; but the engine charged nothing for its services.

Mr. STANLEY. How about the coal? Didn't that cost something?

Mr. PARKER. The same rule applies and I make the same answer. The president's car on different railroads are drawn from one railroad to the other without charge.

Mr. STANLEY. Did it have a special engine?

Mr. PARKER. Not at all.

Mr. STANLEY. Was there an engine to draw that car?

Mr. PARKER. No; it was shifted from one train to another—tacked on a regular train. I am very glad that the gentleman asked the question.

Let us next take up the case of O'Neal. I will put it to any man, what would he do in such a case if he were a judge upon the bench? Greenhut, the man that was stabbed, was appointed trustee in bankruptcy. The duty of such trustees by the bankruptcy act, section 47 in the second supplement to the Revised Statutes, on page 858, was "to collect and reduce to money the property and the assets for which they are trustees under the direction of the court, and to close up the estate as expeditiously as is compatible with the best interests of the parties in interest." He was, therefore, appointed trustee with these duties to perform under the command of the court. His duty was to collect all the assets, take them into possession, and distribute them. Now, mark that his duties were more than those of a sheriff in execution, who is likewise an officer of the court. If a sheriff had taken goods into his hands in execution, and anybody had gone to him, quarreled with him for taking them into execution, and stabbed him with a knife, no one would deny that under the statute a judge would have the power to punish, because the statute says that the courts must punish for contempt in case of resistence by any party, jury, witness, or other person to any lawful writ, process, order, rule, decree, or command of the court.

Mr. BARTLETT. Shall do what with him?

Mr. PARKER. The court may have the power to punish by fine and imprisonment at the discretion of the court.

Mr. BARTLETT. Does that mean to punish under the rule for contempt, or proceed for violation of law?

Mr. PARKER. This is the section as to contempt, and if the gentleman will turn to the majority report on this case on page 22 he will find cited there the act of Congress which gives the courts the power to impose sentence. It is as follows:

The said courts shall have the power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempt of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said court in their official transactions, and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court.

The majority report says that this was not resistance to any legal act, order, rule, decree, or command of the court. Why not?

Mr. BARTLETT. Mr. Speaker, may I ask the gentleman a question?

Mr. PARKER. I must go on now—not now; in a moment.

Mr. BARTLETT. I did not mean to provoke so much rudeness from the gentleman.

Mr. PARKER. I did not mean to be rude. I will be very glad to give an answer to the gentleman.

Mr. BARTLETT. I do not desire to interrupt the gentleman more.

Mr. PARKER. I beg the gentleman's pardon.

Mr. BARTLETT. I am sorry the gentleman gave so much rudeness.

Mr. PARKER. I am too much a friend of the gentleman to have him think any such thing.

Mr. BARTLETT. I beg the gentleman's pardon for interrupting.

Mr. PARKER. I beg your pardon. Come along.

Mr. BARTLETT. I was going to ask the gentleman if he does not know that the act of 1831 was passed as the result of the impeachment trial of Judge Peck, who insisted at his trial that he had the right to enforce his rules against people for contempt in his court the same as the English courts did, and that was the question on that trial; and it was to settle for all time that the judges of the United States courts could not have any such extensive powers that this act of 1831 was passed.

Mr. PARKER. I think I understand the gentleman's statement. I understood the statute was to limit the rules of contempt.

Mr. BARTLETT. And grew out of that case of Peck.

Mr. PARKER. I have heard so here; I never knew it before.

Mr. BARTLETT. I beg the gentleman's pardon if I am giving him the information.

Mr. PARKER. I heard it here from gentlemen who have made arguments on this case.

Mr. BARTLETT. I heard it long before I was a Member of Congress from people discussing that trial, who gave a history of the trial.

Mr. PARKER. I happen to be more ignorant. I never knew about the Peck case until it was mentioned in the Judiciary Committee and here in this matter. I have not studied it.

Mr. CLAYTON. Get the bound volume of the Peck case and you will find the original act printed in the back.

Mr. PARKER. Gentlemen, I am not talking to you about the Peck case.

Mr. Speaker, may I ask to strike out a little bit of this? I do not want to put this in the middle of my argument, and I now desire to go on.

Mr. BARTLETT. I think perhaps it will help it.

Mr. PARKER. I stated, Mr. Speaker, that this was an act of resistance to the command of the court. The command of the court was given to the receiver or trustee to take these assets into his possession. He is given a greater command than a sheriff or marshal under an execution. Under an execution the sheriff can only take the visible assets that he can seize. The receiver can sue for and take equitable assets that can only be recovered by suit. Under an execution the sheriff must only take so much of the assets as are sufficient to satisfy the claim or at least he can not sell more. Under the bankrupt act the trustee must take all the assets. Under an execution the sheriff can desist by permission of the plaintiff without an order of the judge.

Under the bankrupt act the receiver, until he is otherwise directed by the court, must take and collect every asset of the bankrupt that he can find in anybody's hands, whether in possession or in action. That was the trustee's duty. As part of that duty he began a suit, and it was his duty to go on with that suit and prosecute it, and, Mr. Speaker, if any Member of this House were a judge upon the bench, I ask what he would do in such a case? The judge, by order in bankruptcy, has appointed and commissioned a trustee to collect these assets and the trustee has brought suit against a bank. The president of the bank comes and quarrels with the trustee for bringing suit, and draws a knife and lays that trustee up for weeks, and takes the chances of killing him. What would any court do? I ask whether that is not a resistance to the command of the court? True, part of the act was past—the bringing of the suit—but there was more to be done. The cases are consistent, and that of McLeod, in 120 Federal Reports, is complete on this subject. In that case, because of a past action of a commissioner of the court, an attack was made upon him, and although the commissioner had nothing more to do in that case it was held nevertheless to come within that section, and the assailant was arraignable for contempt because it was proven the commissioner was doing his duty, under orders of the court.

The McLeod case is stronger than the one before us. Here the act of the trustee was not complete. He was still going on with the suit, and the attack upon him by this O'Neal was an endeavor to make him stay his hand.

Mr. PALMER. That is a penal statute, is it not?

Mr. PARKER. No.

Mr. PALMER. Does the gentleman say that this statute is not a penal statute?

Mr. PARKER. I read the contempt end of it. It is not a criminal statute.

Mr. PALMER. It is a penal statute, and therefore strictly to be construed.

Mr. PARKER. Yes.

Mr. PALMER. Very well. Suppose you are going to indict O'Neal for resisting the command of the court. If the court had made an order or rule of any kind, he would be in the indictment in haec verba. Suppose you are indicting him for resisting a command of the court, what would you set out in the indictment?

Mr. PARKER. I am not supposing anything of the kind.

Mr. PALMER. The gentleman says that O'Neal resisted a command of the court. I would like to know what command of the court he refers to? Does the record show any command that the court had made?

Mr. PARKER. The court had ordered this receiver appointed. His duty, under the statute following upon the words in that order, was to collect and reduce to money the property and assets for which he was trustee. That was the duty imposed upon him. What is more, we do not have to look for law on that subject. The O'Neal case has been decided on appeal before Judge Pardee and the other judges of the circuit court, good judges all. I wish I had 125 Federal Reporter here, because only part of that was read by the gentleman from Maine [Mr. LITTLEFIELD], and anyone who looks at that case will see the court determined expressly that if the facts were as charged in those papers, then contempt of court under the statute had been committed. What is more, O'Neal obtained a certificate as to jurisdiction to the Supreme Court of the United States, a certificate granted by Judge Swayne. The Supreme Court of the United States ruled upon the case, and it said that the only question was one of fact whether O'Neal interfered with an officer of the court in the performance of his duty, and that such a question of fact could not be certified.

In the case before Judge Pardee the latter expressly ruled that a trustee in bankruptcy was an officer of the court and that he could not be interfered with. The whole case has been determined. It has been settled that this order for imprisonment of O'Neal was lawful, and if it was lawful I will leave it to any Member of the House if he had been a judge upon the bench and an attack had been made upon the trustee in bankruptcy that he appointed for the purpose of performing the official duty of collecting assets and that attack appeared to be in order to keep the trustee from going on with that duty, I ask whether exemplary punishment was not necessary and whether sixty days' imprisonment was not very small punishment? It makes me hot to find persecution lavished upon this judge for his honest action in this case. It is to be regretted, in my judgment, that his order for the punishment of O'Neal never took effect. It is still more to be regretted that it is owing principally to the money and the friends of this would-be assassin that the legislature of Florida was lobbied and a resolution passed against Swayne and that expenses of the prosecution of impeachment proceedings before the Judiciary Committee is now paid. If gentlemen wish to see and verify the truth of that statement, let them look at the record on pages 12, 13, 132, 133, 153, 481, and 482, showing five different lawyers who have been engaged in this work in the pay of this man O'Neal and against Judge Swayne.

Let us turn to the Belden and Davis case. They were guilty of marked contempt and deserved rightly to be punished. It is a case that excites the sympathies of many Members in this House, that of the old lawyer Belden and the other lawyer, Davis, who were ordered to be fined $100 each and imprisoned ten days for contempt of court. The sentence was illegal. "And," instead of "or," was a mistake. It is an easy mistake to make when the statute says "fine or imprisonment." It is a common mistake to make, for in administering such statutes the sentence almost always includes imprisonment if the fine be not paid. But it is certain that it was a mistake. If the sentence had been imposed by the judge upon an ordinary poor outside person, who had no counsel and knew not the law, you might not be so sure. It was imposed here upon three lawyers—Belden, Davis, and Paquet. They were good lawyers. It was imposed at the advice of, perhaps, the most prominent lawyer in the State of Florida, Mr. Blount, whose testimony everyone should read. He looked over the sentence and obviously looked over the statute, because he said, "You can not disbar; you can only fine and imprison." The judge corrected it on that point; and everyone seems to have missed that little "or." There was no intention to do wrong in the form of the sentence. There can not have been any. If there had not been a mistake, the lawyers would have called the judge's attetion to it, and the judge would have corrected it.

Mr. THAYER. Will the gentleman permit me to ask him a question?

Mr. PARKER. With pleasure.

Mr. THAYER. Can not you conceive it possible that these lawyers, who had been unjustly sentenced, remained quiet, knowing that a writ of habeas corpus would lie and that they would get their relief at once?

Mr. PARKER. Yes, sir.

Mr. THAYER. Then why do you blame them for not taking it out before the next day, when they could apply for the writ of habeas corpus?

Mr. PARKER. If you will look at the habeas corpus proceeding, you will find that application was made.

Mr. THAYER. They could take it out.

Mr. PARKER. It was taken out.

Mr. THAYER. They could have taken it out next day.

Mr. PARKER. The writ of habeas corpus was taken. I want to answer the gentleman's question; he has asked me one, and I want to answer it. My recollection is that the point as to the form of the sentence was not taken in the petition or petitions for the habeas corpus; and that even then the parties still did not know of it. (See the petition, pp. 329–30.)

Mr. THAYER. Suppose the full penalty of disbarment, fine, and sentence to the penitentiary had been imposed, and that they had been taken off in execution of that to the jail, could not they next day have sued out a writ of habeas corpus because of their unlawful committal?

Mr. PARKER. In this case just that happened, with the single exception of the disbarment; the sentence was only for fine and imprisonment. It was an unlawful sentence. Belden and

Davis did bring a writ of habeas corpus, and in the petition for it they did not set up that the sentence was illegal, but simply relied upon the question of jurisdiction of contempt itself, and did not even imagine that that sentence was illegal.

Mr. THAYER. The only effect of that is to convince me that the lawyers were about as ignorant of the law as the judge.

Mr. PARKER. We are all subject to make mistakes. When people ask me what is my profession, I say I hope I am a lawyer; I can not claim to be a great lawyer, for a great lawyer is a great man. Mistakes are made by the best lawyers, and that is the reason for the courts of appeal. But the proof shows beyond any reasonable man's doubt that it was a mere mistake in taking the law to be "fine and imprisonment" instead of fine or imprisonment;" and we come, therefore, to the merits in the case and ask whether these men committed a contempt under the statute; and if so, whether they were honestly and fairly to be punished for it.

Now, I ask your attention for a moment to the facts on this particular matter, because they seem to have been misunderstood. If gentlemen who have copies of the record in this case will turn to the beginning of Judge Swayne's statement on this subject, beginning at the bottom of page 581, they will find that he says:

In the suits tried before me—

This McGuire suit had been tried before—

In the suits tried before me, involving the title to the extreme eastern portion of the city of Pensacola, the description given in the pleadings was as follows:

"That certain parcel or piece of land known as the Gabriel Rivas plat, containing 262½ acres, more or less, in the eastern portion of the city of Pensacola."

This, in a general way, was the only knowledge I had of its location. I knew nothing of its metes and bounds and did not refresh my mind as to its location at all.

So much for his knowledge, which is essential——

Mr. SMITH of Kentucky. Will the gentleman allow me to ask him a question?

Mr. PARKER. Certainly.

Mr. SMITH of Kentucky. Did not Mr. Hooten, the real estate man who sold it to him, or sold it to him for his wife, take him out and show him this land—show him all around?

Mr. PARKER. I am coming to that. He did not show him around this big tract that I am talking about—the Gabriel Rivas tract—or tell him the boundaries of that.

Mr. SMITH of Kentucky. He showed him lot 91.

Mr. PARKER. That is true; I am coming to that. Will gentlemen please not interrupt before I finish a little of my statement? This Maguire suit was as to what is called the "Gabriel Rivas tract." It was one of those sweep surveys, covering a large portion of the city, seemingly under some old Spanish or other grant, for the name "Gabriel Rivas," as well as "Caro," sounds very Spanish. I will read what Judge Swayne says:

In the summer of 1901 my wife had some money which she had inherited, and, desiring to invest the same, I advised the purchase of city lots. We looked over several and were pleased with the location of block 91 of the new city tract, and agreed with the agents to purchase. I knew nothing of Mr. Edgar, the owner of block 91—did not remember ever hearing his name before. He was not a party defendant in either of the suits of ejectment by the Caro heirs, although named in the pleadings of one of them, but no attempt at service was made so far as I am informed.

Not the slightest hint or suggestion had up to that time entered my mind that this block was a portion of the Gabriel Rivas tract, and only upon the receipt of Messrs. T. C. Watson & Co.'s letter of July 19, 1901, as contained on page 57 of the printed testimony, did I first learn of its connection with these suits.

Now, I turn to this letter from Watson & Co. They seem to have been agents for the sale of land, and they wrote him:

We have deed to block 91, New City, from Mr. Edgar, but he refuses to give a warranty deed to this block; he merely gives quitclaim deed. We have received a letter from him, in which he writes he is unwilling to give anything but a bargain and sale deed, as he is afraid of the old —— Caro claim on this, which seems to be his objection. We have recently made an abstract of title of this property, and it seems to us we would just as soon have one deed as the other, but we lay the matter before you so as to have you perfectly satisfied. In case the deed is not satisfactory to you, of course, we will have to drop this deed or wait until you come home. Thanking you for an immediate reply.

Yours, truly, THOMAS C. WATSON & Co.

He immediately answered, in July, 1901, saying:

Gentlemen, you may omit block 91 and send papers for the others along, and oblige,

Yours, truly, CHARLES SWAYNE.

Then, July 25, they wrote, sending him the papers for the other lots and leaving that one out. He had done what an honest man and an honest judge ought to have done. He said: "I can not buy anything that is in litigation before me. I prefer not to call another judge in to do the business I ought to do. I will not buy this lot or have my wife buy it."

He made no mistake in that; he did the right thing.

Mr. HENRY of Texas. I do not want to break into the continuity of the gentleman's argument, but I would like to ask him a question right there, if he will allow me.

Mr. PARKER. Certainly, I will.

Mr. HENRY of Texas. If Judge Swayne dropped out block 91 in July, why is it that, on November 5, 1901, he stated that a relative of his had purchased lot 91?

Mr. PARKER. Well, she had purchased or agreed to purchase it, and then did not take it.

Mr. HENRY of Texas. But he said to drop it out in July.

Mr. PARKER. It was dropped out.

Mr. HENRY of Texas. In July?

Mr. PARKER. The expression "had purchased" is pluperfect, is it not?

Mr. HENRY of Texas. He said that a relative had purchased the lot.

Mr. PARKER. I suppose your wife is your relative?

Mr. HENRY of Texas. Certainly; and if I were a judge and my wife had an interest in property which was the subject of litigation before me, I would recuse myself instantly.

Mr. PARKER. The gentleman from Texas does not seem to understand the evidence. Judge Swayne says that she had made an agreement for purchase.

Mr. HENRY of Texas. He didn't say that. On the 5th of November he said a relative, without saying it was his wife, had purchased lot No. 91.

Mr. PARKER. He had purchased it, but had given it up, and the agreement for purchase had been called off.

Mr. HENRY of Texas. Oh, no; he said a relative had purchased it, and on November 11 he said the relative was his wife.

Mr. PARKER. Now, Mr. Speaker, I am willing to allow interruptions, but I beg gentlemen not to interrupt me too frequently. I had got so far as the 25th day of July, 1901, and I am coming slowly down to the 11th of November. When I am trying to give an orderly statement of what happened in this matter, Members interrupt me with questions. I have got now as far as where Judge Swayne writes to them in July that his wife refused to take that lot. His wife had made an agreement of purchase, and he and she refused to carry it out, because the title was clouded and in litigation before him. He gave no reason, but, like a sensible man, he simply wrote and said, "Drop that out."

The next thing that appears to have taken place in the order of time was a suit brought by the agents, Watson & Co., against Edgar for their commission for making the sale of this lot. They were entitled to a commission, because Edgar had put the lot in their hands for sale, and they had done all they were asked to; they had found a purchaser, and then the title had failed, but by no fault of theirs. The lot had not been conveyed, the sale had fallen through, but they had done their work and were entitled to their commission.

That matter got into the newspapers, I suppose, or in some way it was known or rumored that Judge Swayne had bought this lot, and not knowing that the sale had been called off, it went around the community that he was the owner of the lot; and thereupon the attorney, Paquet, whether with Belden or not I don't know, addressed a letter to Judge Swayne at Guyencourt, Del., in which they told him that they understood that he owned a part of that property in litigation before him, and asked him to recuse himself. Remember, that was in October; that was three months after he had looked at the lot and thought of taking it and refused to take it, and he did not obviously know what these gentlemen were talking about, whether they meant that some of the other lots which he or his wife had purchased were within the McGuire tract, or whether it was this lot that she had refused, or what they meant.

Mr. SMITH of Kentucky. I should like to ask the gentleman a question.

Mr. PARKER. The gentleman is aware that I do not wish to be interrupted.

Mr. SMITH of Kentucky. I would like to know where the gentleman gets his facts when he says that when Judge Swayne got the letter from Paquet and Belden, he didn't know what they meant.

Mr. PARKER. I say how could he have known?

Mr. SMITH of Kentucky. He had traded for lot No. 91.

Mr. PARKER. The letter does not say lot No. 91. The letter has not been produced by them or anyone else. It has been described in the testimony. The gentleman from Wisconsin [Mr. COOPER] referred to it the other day. They do not seem to have said it was lot No. 91, or where it was, but they said, "You own a part of the property that is in this litigation, and you ought to recuse yourself." That is enough to make a judge think "Isn't this rather funny?" I think it was funny. If

these gentlemen had gone to T. C. Watson & Co. and asked them about what that suit for commissions meant they would have learned that the suit was based on a sale that was never carried out and the lot not conveyed to Judge Swayne or his wife. If they had gone to Edgar and asked him the same question he would have said the same thing. But these lawyers, without inquiry, accepted a mere street rumor and then wrote to Judge Swayne generally that he was interested in the property that was in litigation before him as a judge of the court, and asked him to recuse himself. I do not wonder that he refused to answer the letter until he found out what they meant, especially as he was soon going to be in Florida. This letter was written on the 16th of October.

Mr. RICHARDSON of Alabama. Mr. Speaker, I am very much interested in the gentleman's argument, and I just want the liberty of asking him one question for information.

Mr. PARKER. Is it upon this point?

Mr. RICHARDSON of Alabama. It is upon the purchase of that lot.

Mr. PARKER. Only on this point just where I am. I would like to get through the order of dates.

Mr. RICHARDSON of Alabama. It is on that lot which the gentleman has just been discussing with the gentleman from Texas [Mr. HENRY], and I desire to get some information from the gentleman.

Mr. PARKER. If the gentleman will wait a little bit, I would be very much obliged. Now, I was saying that Judge Swayne knew on the 16th or 17th of October, when he got that letter, that he would be down in Florida before the 5th of November, for he was trying criminal cases there on the 5th of November, and it would take only about twenty days. He waited until he got there, and on the 5th of November he states that the counsel were before him and he told them the facts. Mr. Paquet has not contradicted it; Mr. Belden has not contradicted it, because he was not there—he was sick at that time and away. Mr. Davis says he was not employed as counsel, but Mr. Davis does say, I think it is on page 329, in his petition for habeas corpus, that Judge Swayne on the 5th of November made certain statements in court, and seemed to imply that he was there. True, he says that that petition for habeas corpus was gotten up on a blank form for both Mr. Belden and himself, and that he did not mean he wrote the letter of October 16, and nobody can tell exactly what he did mean in that petition.

Mr. PALMER. Does not the gentleman remember that Mr. Davis was a respectable member of the bar and swore positively that he never was employed in the case until Saturday night?

Mr. PARKER. Yes.

Mr. PALMER. Very well. Now, what is there to contradict his testimony except some——

Mr. PARKER. I am not contradicting his testimony.

Mr. PALMER. Then what is the gentleman trying to prove—that he was not a member of the bar?

Mr. PARKER. I am trying to prove something that the gentleman does not seem to understand. [Laughter.]

Mr. PALMER. That is right.

Mr. PARKER. If the gentleman will sit down and listen, instead of asking questions, he will likely find out.

Mr. PALMER. It is not my fault——

Mr. PARKER. It is the gentleman's fault. He interrupted me in the middle of a thought.

Mr. PALMER. It is not my fault. It is the fault of my intellect. That is the trouble. I am too dumb to understand.

Mr. PARKER. It is not that. It is the fault of the gentleman interrupting me when I was just about to tell him what the matter was. The gentleman prevented my speaking before, and he can not do it this time.

Mr. PALMER. Give it to us straight. [Laughter.]

Mr. PARKER. I am going to give it to you straight. [Renewed laughter.] Now, I have got so far as this. The record made up on November 11, 1901, reads as follows, page 324:

> On Tuesday, November 5, 1901, at the time of the presentation of the said motion by the plaintiffs, that the court recuse himself, he had then stated, and now states, that he never agreed to accept nor ever accepted any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found out that the property in the deed was a portion of the property in litigation in the suit of Florida McGuire *v.* Pensacola City Company et al., and thereupon, and by his advice, the said deed was returned to the proposed grantors, with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of this tract.

That is what Judge Swayne, in the record of the contempt proceedings, said on the 5th and 11th of November. Now, in the petition for a habeas corpus, page 329, Mr. Davis says that on the 5th of November Charles Swayne refused to recuse himself, and went on to state from the bench, in open court, that a relative of his had purchased a part of said lands in litigation before him in said suit of Mrs. Florida McGuire; that the deeds had been sent north to him [the judge], and that he had returned them.

The fact that Davis says he was not counsel at that time would not prevent his hearing that statement, and he has never said that he did not hear it or that that part of that petition is untrue. If so, counsel, parties, the community, probably through the newspapers, but certainly everyone present in that court knew that the judge owned no interest in that land on the 5th day of November. Then the judge went on with the trial of criminal cases until the 9th of November, which was a Saturday. Then, instead of being ready for trial, the parties in this case were not ready and wanted it postponed for the term. The court refused in the exercise of a sound discretion. Remember they had notice on the 5th that he stated he was competent and had the right to try that case, and they had four days' notice to get their witnesses.

Thereupon, this contempt was committed. I think it was a misbehavior of officers of the court, but I do not rely upon that. Under the statute already read contempt proceedings will lie for the misbehavior of any person, not only in the presence of the court, but so near thereto as to obstruct the administration of justice; we do not care, therefore, whether they—Belden and Davis—were lawyers and officers of the court, bound by their positions as members of the bar (except that their knowledge of the law and their confidential position was an aggravation of the offense), or whether they had been other persons, the parties to the suit, or outsiders. In the face of the judge's denial that he was interested in that lot, without once inquiring as to the facts from Watson or Edgar, without investigating whether the lot had been conveyed or not, they brought suit in the State court on that Saturday night against the judge as the owner of the land. That is not all. That suit was a sufficiently clear statement to the judge and to the community that he was a liar. It was a sufficiently clear statement that he was dishonest in attempting to try a case in which he was interested. It was a clear attempt to bring him into contempt in that community and to obstruct the administration of justice by making everybody distrust him——

Mr. GAINES of Tennessee. Will the gentleman yield?

Mr. PARKER. Not now.

Mr. GAINES of Tennessee. It interests me very much along there and——

Mr. PARKER. Just stop a moment. I do refuse to answer for the moment, but I will answer the gentleman in a moment.

Mr. GAINES of Tennessee. Do not leave the subject before I get a chance to ask the question, because I really want to ask a question there.

Mr. PARKER. It is a sufficient thing of itself to obstruct the administration of justice to bring a public suit against him of that sort, informing that whole community that the lawyers who had brought that suit believed that the judge was interested in the case before him, had refused to leave the case, and had lied about it. But they did more. That very night the attorney himself, Paquet, put into the newspapers of that town the following article:

> JUDGE SWAYNE SUMMONED AS PARTY TO THE SUIT IN CASE OF FLORIDA M'GUIRE V. PENSACOLA COMPANY ET AL.
>
> A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the "Rivas tract," in the eastern portion of the city, near Bayou Texas, by the filing of a præcipe for summons, through her attorneys, ex-Attorney-General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceeding for possession of block 91, as per map of T. C. Watson, which is part of the property which is claimed by Mrs. Florida McGuire, and which it is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.
>
> The summons was placed in the hands of Sheriff Smith late last night for service.

Anyone who has common sense will say that it was the object of that statement to tell the community that that judge was not fit to sit upon the bench, because he wanted to try a case in which he was interested and because he lied when he said he was not interested. Obstruction to the administration of justice is not merely coming and striking a judge with a hammer; it is not merely making a noise in the court room; it is not merely bribing witnesses or bribing jurors in a case; it is not merely that. During the term, when the community is looking to the judge for truthful statements of the facts and the law, if any person, worst of all if attorneys of his court, dare to charge him

with dishonesty upon the bench in a pending case; dare to charge him with lying about the facts in that case; dare to emphasize and publish those charges by public suit, brought against him on a claim that they ought to have known and must have known was without foundation, and dare still more to prepare and publish an article calling public attention to that suit, and saying that it is alleged that the judge is interested in the suit pending before him, no court that respects itself and its duties can for a moment fail to see that for the protection of the honor and dignity and good faith of that court, which must depend upon the trust of the community, it is necessary to punish these men.

No court that respected itself could afford to allow that contempt to pass unpunished, and imprisonment for ten days and a fine of $100 was a light punishment for that attack upon the honor and dignity of that court. This, too, has been already so determined, for the appeal in that case (120 Fed. Rep., in re Davis) set aside the sentence, not upon its merits, or upon the grounds set up in the petition, but upon the question of whether "fine and imprisonment" should be "fine or imprisonment." Those who have somehow gotten an idea that Judge Swayne is an unjust judge because he so protected his court have, in my opinion, unwittingly done him the greatest of wrong. In inflicting that punishment he did as righteous an act and as brave an act as was ever done by any judge.

Now is the time for the question of the gentleman from Tennessee [Mr. GAINES].

Mr. GAINES of Tennessee. All right. Now, I want my friend from New Jersey [Mr. PARKER] to feel assured that I am perfectly sincere in this.

Mr. PARKER. I am ready now to hear you.

Mr. GAINES of Tennessee. I have listened to the gentleman from New Jersey [Mr. PARKER] with a great deal of pleasure. Will the gentleman tell me when Judge Swayne informed those lawyers he did not have any interest in that property?

Mr. PARKER. On the 5th day of November.

Mr. GAINES of Tennessee. Where does the gentleman get his authority for that?

Mr. PARKER. It is in his statement, and it is found in Davis's affidavit, on page 129.

Mr. GAINES of Tennessee. Why did not Judge Swayne answer the letter, and why has not Judge Swayne furnished the letter that these gentlemen wrote to him? Why did he not answer it, and why did he not furnish it as part of the proof in this case?

Mr. PARKER. I will say to the gentleman from Tennessee that I tried to answer that question. I do not think it was necessary.

Mr. GAINES of Tennessee. The gentleman knows that the presumption is against him if he can not produce the letter? That is a good proposition of law?

Mr. PARKER. Not at all. I want to say to the gentleman that the judge received a notice from the lawyers—a letter, as I remember it, though I have not it before me—containing a statement which included no details, but simply said to him that he was interested in the Rivas tract which was in litigation before him, and they wanted him to recuse himself. There were several reasons why he might wait until he met them on the 5th of November.

Mr. GAINES of Tennessee. How long did he wait?

Mr. PARKER. From, say, the 17th of October to the 5th of November. He knew he was to be there. One reason might be that he thought those lawyers might have made a little inquiry before they made such a charge against him, for the least inquiry would have shown it was all wrong. If they had asked Mr. Edgar or Watson & Co. they would have found it was all wrong. No purchase had been consummated, although agreed upon. In the next place, he might have been puzzled to know what they were referring to. He had bought—or his wife had—certain lands in Florida by warranty deed. The agents had tried to make them take a quitclaim deed for another tract of land, and said that the quitclaim would be just as good as a warranty deed. He had taken other lands, and it might be that he wanted to go down to Florida and see the agents and see if he could deny that he was interested.

He did not perhaps remember the exact terms of the letters. He himself, when he came to make a statement in November, made an immaterial mistake. He said the deed had been sent to him and that he had returned it. That was untrue. The deed had been sent to the agent, and he ordered it returned. And he might have been doubtful whether that agent had performed the duty which he had imposed when he told him to return it. He might have been looking for light. There are fifty reasons. It might have been sheer carelessness, and even Congressmen are sometimes guilty of carelessness in anwering a letter. A judge has many letters to answer. But I do not see how twenty days made any difference if he did go there. He then found out what they meant. When they said he owned lot 91 he denied it, and explained it, and the case was set on the 5th for the 11th. And then they took revenge by bringing the suit and publishing a statement in the newspaper about him.

Mr. GAINES of Tennessee. How do you answer this allegation that he did not buy this property in litigation?

Mr. PARKER. The fact is given in the record.

Mr. GAINES of Tennessee. Give me the page of it.

Mr. PARKER. I have given it to you. You will find it on page 582 of the testimony.

Mr. SMITH of Kentucky. Mr. Davis it is not asserted was present. In the article filed by Mr. Blount it is not asserted that Mr. Davis was in court and heard the statement. He says Belden and Paquet were there; and I understand that is a mistake, in saying that Belden was there, as he was not there, but was sick.

A MEMBER. Nobody but Paquet was there.

Mr. PARKER. How many people am I answering?

Mr. SMITH of Kentucky. You are answering a certain proposition, it does not make any difference how many people you are answering.

Mr. GAINES of Tennessee. Did not these lawyers have the right to file this suit? Did not these men have the right to file this suit against this judge, even if he was a judge?

Mr. PARKER. Will you kindly stop putting more questions until I get through with those already asked? The first question was whether Davis knew what the judge said. Davis filed a petition, which is already referred to, and which is found on page 329, which shows that he knew what the judge said. He states that the judge said that he returned the deed.

I desire to say, as to the matter of knowledge, there is no difficulty about the knowledge of these attorneys. Belden was one of the attorneys and Paquet was present all the while. Davis was consulted before the suit was brought and before the newspaper publication was indulged in, and he knew what were the facts. He never denied knowledge of the facts, and he signed the petition in the habeas corpus, in which he said directly that the judge had made this statement in court, and so did Belden in filing a like petition. Will anybody tell me, after they have made that statement in their petitions, that they did not know that the judge had made that statement that he was not interested in that land?

Now, I answer the other question of the gentleman, as to whether people have a right to bring a suit against a judge——

Mr. GAINES of Tennessee. Do you think a Federal judge is better than a plain man in his right to be brought into court and made to disclose whether or not he owns a particular piece of property? Is a Federal judge better than you are, or than I am? That is the question I want to ask you.

Mr. PARKER. The gentleman first asked me whether it was any contempt to bring a suit against a judge. He then asked me a second question as to whether a judge is any better than a private man. I will answer that a judge is no better than a private man, but in his official transactions he represents the majesty of the law, and his person and his actions must be treated as sacred so far as necessary to maintain the administration of justice, and anything which interfers with or obstructs that administration of justice is not a contempt of the judge, but a contempt of the court and a contempt of the law, which is better than any private man. [Applause.]

In the next place, to bring a suit against a judge is nothing. To bring a suit which states that he is the owner of property which he has denied owning, and which is not only a public record, but is emphasized by a contemporaneous publication in a newspaper which forms part of the same transaction, and charges that that judge is corrupt enough to try and hear a case in which he is interested and cowardly enough, or worse, to deny such interest—I say that suit against a judge is a contempt of the court which the court must punish in justice to itself.

Now, the gentleman from Alabama [Mr. RICHARDSON] desired to ask me a question.

Mr. RICHARDSON of Alabama. I would be glad to ask a question for information. The gentleman has discussed, with marked courtesy, all the matter relating to block 91. I should be glad to call his attention most politely and respectfuly to this paragraph in the testimony, which possibly he has overlooked:

> The relative I referred to yesterday or the day before was my wife.

He went on to say that his wife had paid for the property from funds from the estate of her father in Delaware.

Mr. COCKRAN of New York. On what page of the record is that?

Mr. RICHARDSON of Alabama. Page 116. I just call the attention of the gentleman from New Jersey to that, because he has been so kind——

Mr. PARKER. The judge never said that they had bought and paid for the lot.

Mr. RICHARDSON of Alabama. That is in the record.

Mr. PARKER. No; it does not relate to that. I will go over it and explain it to the gentleman later with great pleasure.

Mr. RICHARDSON of Alabama. Don't you think that the highest degree of propriety and regard for judicial dignity would have led him to recuse himself from that trial?

Mr. PARKER. Oh, it would have been better for him not to have done as he did, if that was so. It was not so.

Mr. Speaker, there is but one other matter charged, and that is one that has given me the greatest concern. At the very end of this case it was proved, to my great astonishment, that the statutes of the United States only allowed actual expenses, not to exceed $10 a day, to judges traveling outside of their districts. I have been at the bar for many years. I have heard it remarked over and over again that judges were glad to go to other districts, because they got $10 a day for it. I supposed it was like our 20 cents a mile; that they got $10 as an allowance for that work. I always supposed so. I know the sentiment of the bar was that that was so, and I was very much astonished to find, when I came to read the statute, that it was not so.

The statute is not easy to find. Gentleman will look for it in vain in the Revised Statutes or in the supplements thereto. It is contained in a sundry civil appropriation bill of 1896. Extracts were made from that act in the second supplement of the revision, but this particular section was never so extracted. It took me some time to find that particular section which provided for the payment of judges serving outside of their circuits of their reasonable expenses for travel and attendance not to exceed $10 a day, to be paid to them by the marshal upon their certificate. (See Appendix B, Law as to Expenses.

I was not present at the taking of the testimony. During the evidence it was offered to be proved on Judge Swayne's behalf that it had been the custom of various courts to certify $10 as a lump sum. That offer was refused, and I am inclined to think it was properly refused. But I am inclined to think that Judge Swayne would have had a right to testify in his own behalf to prove that he knew that this was done.

His knowledge was of importance because it might bear on the question of intention, but that it was done by other people by itself was of no importance. His knowledge of such an accepted practice was of importance. I understand that his counsel now say that they accepted the exclusion of that evidence and would have asked Judge Swayne about this matter if they had not supposed the committee would not allow him to go into it at all. I think the subcommittee would have allowed him. Unanswered, unexplained, the fact that he took $10 a day when he had spent less is a thing that is hard to deal with.

Half a dozen of us made a report in this matter. It was carefully drawn, not by myself—I have not the honor to draw that sentence with reference to that matter—it was carefully drawn, and the sentence was afterwards repeated in the speech of the gentleman from Maine [Mr LITTLEFIELD] when he spoke on the question of impeachment. He said that unanswered and unexplained, this constitutes an impeachable offense.

Mr. Speaker, I blame myself that I did not add, as I had intended in the beginning, that the statement that this was an impeachable offense did not mean that he was necessarily to be impeached. There are many indictable offenses for which a grand jury will not indict. If a practice has prevailed for years among the best citizens of the community, even if it be a breach of the law, grand juries bring in in some States what is called a "general presentment." We have known the grand jury to present, for instance, that people are too careless in regard to the child-labor law or that there are too many saloons open or whatever it may be that becomes a public nuisance, whereas they decline to indict until they give a notice to stop by their presentment. If a custom of this sort has been adopted as a practical construction, that "reasonable expenses not to exceed $10 a day" meant a reasonable allowance for travel and attendance, or if the certificates were signed on the marshal's presenting a certificate as the well-settled practice and without looking at the law, or if it was done for any honest motive, no Congress would impeach.

I wanted to say that then in my report, but I thought it was better said on the floor on the motion for impeachment. Mr. Speaker, I can not get over the fact that when a Member of the committee who had signed a minority report asked for leave on this floor to speak and that the previous question should not be put, he was refused, and the previous question was put, and that I was unable to inform the House of my views at that time on that subject.

Mr. PALMER. I want to state here that I asked the gentleman from New Jersey if he wanted to speak, and he said he didn't know. I had no idea that he wanted to speak at that time.

Mr. PARKER. I rose to speak.

Mr. PALMER. I beg the gentleman's pardon; he rose to make a point of order that the previous question was not in order. If the gentleman is criticizing me for not allowing him to speak, he is under a misapprehension.

Mr. PARKER. I do not criticise anyone. I say, however, whether it was unwittingly done or not, in a case that involved the honor and the judicial life of a judge of the Federal court, I ought to have been allowed to speak.

Mr. JENKINS. Inasmuch as it was largely due to the influence of the gentleman from New Jersey that I joined him in favor of impeachment, I want to ask him if he had any evidence before him, or if there was any evidence taken before the committee, that any judge in the United States other than Judge Swayne had ever paid out only a dollar and a quarter a day and then put in a bill for $10?

Mr. PARKER. I can not answer the gentleman's question.

Mr. JENKINS. Does not the gentleman know that there never has been a particle of evidence submitted before the committee as to the conduct of any other judge in the United States in that particular?

Mr. PARKER. That is true; it was ruled out.

Mr. JENKINS. It was not; it was never offered.

Mr. PARKER. I beg the gentleman's pardon.

Mr. JENKINS. I beg the gentleman's pardon—and any gentleman who will look at the record can determine that question.

Mr. PARKER. I understood so.

Mr JENKINS. The gentleman says he understood so; but assuming that that was true, is it any defense for Judge Swayne that ten other judges in the United States have deliberately stolen $6,000 out of the Treasury of the United States and put it into their pockets? That is what I want the gentleman to answer, and I want to ask him if I did not join him in recommending that Judge Swayne be impeached?

Mr. PARKER. I did not recommend that he be impeached. I said that it was an impeachable offense. [Laughter.] Now, I say that is a very different thing, a very different thing. I can say of many a man that "unanswered and unexplained" his act was indictable, but I believe it has been said that if everything that was against the law was punished there would not be any man out of State prison. There are excuses for everyone.

I intended to take the floor then and state this. I still think that to take that money on a certificate knowingly and willfully, as charged in these articles, is impeachable. If it is done not knowingly and willfully, but with the belief that the question has been settled and made a practical ruling of the courts, this does not justify the act in law, but it might induce us to hesitate in acting on that alone.

Mr. JENKINS. Mr. Speaker, I will ask the gentleman if any judge has admitted to him that he has ever perpetrated any such crime on the United States?

Mr. PARKER. To me? No. To others, yes.

Mr. JENKINS. Has the gentleman any knowledge that any other judge in the United States has committed that crime?

Mr. PARKER. Yes; a letter appeared—a certain letter which I showed the gentleman in confidence.

Mr. JENKINS. Yes; and no disclosure was made that would justify the gentleman's statement on the floor of this House, if he wants me to refer to a confidential letter.

Mr. PARKER. Then why does the gentleman ask me questions?

Mr. JENKINS. Because I supposed he would answer them and give us some light on the question.

Mr. PARKER. How could I answer the question?

Mr. JENKINS. If the gentleman does not want to, he does not have to.

Mr. PARKER. Mr. Speaker, there has come out since the investigation a document which I think is of importance. I do not rely at all upon ordinary newspaper reports. But this was a copy of a letter written by Mr. Shaw, Secretary of the Treasury, or by some one in his office in authority, and published by his authority at first in the Washington Post and afterwards in other papers. It gave five circuits. That letter has probably come into the hands of every gentleman. It does not show that any judge ever spent any less than he certified. In that I answer the gentleman frankly. It does show that in one circuit there were seven judges who always certified $10 a

day, covering a large number of days. It showed that in another circuit there were nine judges, of whom eight, I think, always certified $10 a day. In other circuits the practice varied. I came to the conclusion that there was a difference of practice in the various circuits.

Mr. FITZGERALD. Is there any evidence that these men who certified an expenditure of $10 a day had in fact expended less than that amount?

Mr. PARKER. There is not the slightest evidence of that fact.

Mr. PALMER. Then what does all that amount to?

Mr. FITZGERALD. Then is the gentleman assuming that, because a number of judges certified that they had expended $10 a day, the mere fact that they coincided in amounts is evidence that they had not expended the amount certified? Is that the gentleman's inference from these facts?

Mr. PARKER. I do not infer.

Mr. FITZGERALD. Is that the inference he wishes the Members of the House to draw?

Mr. PARKER. I do not infer. I wish them to draw no inferences. I will state I doubt—I will state that the offer was made in the testimony to prove that it was the practice of other judges. That offer was made when that matter was first brought out in the testimony.

Mr. PALMER. It was not made. The offer was on the cross-examination of a witness.

Mr. CLAYTON. Judge Swayne, in the hearing before the subcommittee, either he or his counsel——

Mr. PARKER. His counsel.

Mr. CLAYTON. Did seek to show that other judges had charged $10 a day under the head of expenses; but as to the question that the gentleman from New York [Mr. FITZGERALD] asked, if Judge Swayne or his counsel on that hearing undertook to show that any judge had charged $10 a day and had expended only $1.25, there was no such offer made.

Mr. PARKER. Well, I shall refer to the record. I do not want to detain the House any longer now.

Mr. CLAYTON. If the gentleman will permit me—I have not interrupted him—here is some language that I want to call attention to:

> Evidence as to the alleged practice of other judges in this respect was offered and excluded, and we think properly. It would have been competent for him, when a witness in his own behalf, to have stated why he made those certificates. As a witness, he answered and explained every other charge. This charge he made no effort, as a witness, to answer or explain. The inference from the record, on general principles, is that the charge is admitted to be true, and that he has no answer or explanation thereto. Whether a satisfactory explanation can be made we do not say. We must take the record as it stands.
>
> Upon this record, unanswered and unexplained, we are of the opinion that in this particular an impeachable offense has been made out.
>
> RICHARD WAYNE PARKER, AND OTHERS.

Mr. PARKER. Of course I signed it.

I have already stated that, unanswered and unexplained, an impeachable offense has been made out. But if the statute has been otherwise construed, it is a matter for this House, under its conscience, to determine not merely whether the matter is impeachable, but whether under the circumstances it demands impeachment. That is the question before this House. It is a question of conscience with every man. I had proposed to state this on the motion for impeachment. I had not bound myself to vote for impeachment by saying that, unanswered and unexplained, that action was impeachable.

Mr. LACEY. Mr. Speaker, I will state to the gentleman in this connection I find the reference that is called for on page 433.

This is the point of the judge being denied the privilege of explaining this and then being called to the bar of the House because he did not explain it. They asked this question of Mr. Bradley:

> Q. The accounts of all the judges pass through your division of the United States Treasury Department?—A. Yes, sir.
>
> Q. And as chief of that division you have supervision, and it is your duty to inspect all of them?—A. Yes, sir.
>
> Q. I observe here that the charge as certified by Judge Swayne for any particular number of days seems to be at the rate of $10 a day?—A. Yes, sir.
>
> Q. Is that usual?
>
> Mr. PALMER. I do not think that is of any consequence. You need not answer that question.

Mr. PALMER. Go on.

Mr. LACEY. "We are not trying any judge except Judge Swayne." The fact of the matter that other judges put a construction upon this law that it was a flat fixed rate of $10 a day is not permitted to be proven by the accounting officer who audits the accounts.

Mr. PALMER. Mr. Speaker, the Judiciary Committee unanimously, including Mr. PARKER, stated that ruling was right, and so would any other lawyer.

Mr. LACEY. Why did you refuse the Judge an opportunity to explain that when he offered to show that that was the construction put upon the law by other judges?

Mr. PALMER. It was up to the judge after that to make a distinct and specific offer to prove a distinct and specific fact. If he had any specific fact to prove it and offered it in a legitimate and proper way it would have been received.

Mr. CLAYTON. What he offered was to the effect that if he was guilty of this wrong he said he justified it on the ground that others had been guilty.

Mr. JENKINS. Will the gentleman permit me to ask the gentleman from Iowa a question in this connection?

Mr. PARKER. I want to get through to-night.

Mr. JENKINS. You will have all the time you want. I ask the gentleman from Iowa if he was not reading from the testimony of a witness other than Judge Swayne?

Mr. LACEY. Certainly.

Mr. JENKINS. Did they ask that witness to prove whether or not any other judge had taken money in excess of what he was entitled to?

Mr. LACEY. No; they asked this proposition. Here is the offer by Senator Higgins:

> Mr. HIGGINS. The point that I make, if the committee pleases, is that the action of the several and respective judges of the courts of the United States are practically a judicial interpretation of the statute—as to what it means—and that if the judges are informed to furnish the certificates at the rate of $10 a day it is their interpretation of its being proper and right under the statute.

Mr. JENKINS. How could that witness testify as to the understanding of all the judges of the United States?

Mr. LACEY. He was asked as to whether it was usual that bills were put in at this fixed rate, and he was denied the privilege of answering it, and the committee, I think, made a mistake; and yet they come into this House and reflect upon the Judge because he did not testify to what they would not allow a disinterested witness to testify to under oath.

Mr. JENKINS. But the judge was not on the stand, but subsequently he was given an opportunity to explain or deny, and he never offered or attempted to explain or deny.

Mr. LACEY. He was not asked the question. This witness was told by the chairman, "You need not answer that question. We are not trying any other judge except Judge Swayne."

Mr. FITZGERALD. Mr. Speaker——

Mr. PARKER. Mr. Speaker, have I the floor?

Mr. FITZGERALD. Does the gentleman say——

Mr. PARKER. I would like the floor.

The SPEAKER pro tempore. The gentleman from New Jersey declines to yield, and gentlemen will be seated.

Mr. JENKINS. I would like to ask the gentleman from New Jersey [Mr. PARKER] a question.

Mr. PARKER. Of course, I will have to yield to the chairman of the Committee on the Judiciary.

Mr. JENKINS. Mr. Speaker, I want to ask a question of the gentleman from Iowa [Mr. LACEY].

Mr. PARKER. I would say to the gentleman from Wisconsin [Mr. JENKINS] that I would rather not get into any more discussions on that. But he may go ahead if he so desires.

Mr. JENKINS. I want to ask the gentleman from Iowa [Mr. LACEY] if it is a defense for Judge Swayne that ten other judges in the United States have committed the same crime?

Mr. LACEY. The answer is very simple.

Mr. JENKINS. In other words, is it a crime for a man to steal from the United States?

Mr. LACEY. The proposition came up in this way, and I am informed by the members of the Committee on Appropriations that they were asked to amend the law which required the judges to give an itemized account of the expenses of a judge who was outside of his circuit, and it was recommended to modify the law so that a fixed sum would have to be allowed in each case.

Mr. PALMER. But they did not do it?

Mr. LACEY. They attempted to do that. Appropriations were made from year to year and in every appropriation the same identical language was used as in the amendment to this law; it was done from year to year by nearly—I will not say nearly all—but as shown by the Secretary of the Treasury, at least a majority of the judges construed the law to give them a fixed rate of $10 a day; just as the law gives a fixed rate of 20 cents a mile to my friend from Wisconsin [Mr. JENKINS] when he comes from Wisconsin here, when the actual traveling expenses are not that much; just as it allows $4 to a man who is traveling as an Indian inspector, whether he spends it or not; and as it allows $3 a day to a pension examiner whether he spends it or not. That same construction was put on it by the judges.

Mr. JENKINS. By what judges?

Mr. LACEY. Practically all the judges in the circuit in which these gentlemen live.

Mr. JENKINS. Because we have a letter from a judge you were mistaken when you made that statement on the floor of the House here recently.

Mr. LACEY. We have now the information from the Secretary of the Treasury which shows that in a considerable majority of the cases the judges put the construction upon it of a fixed rate of $10.

Mr. JENKINS. Did Judge Swayne either tell the gentleman or the committee that he put that construction upon it?

Mr. PARKER. I think this is going beyond the question. I desire the floor.

Mr. PALMER. I would like to ask the gentleman a question.

Mr. PARKER. I decline to yield further. This publication by the Secretary of the Treasury, covering the year 1903, showed a great variety in the circuits. In one circuit of seven judges none of them took $10 a day as a regular thing; in another eight always took $10 a day and one did not, and it went to 670 days for the eight. In another of seven judges all of them always took $10 a day, amounting to 366 days. In other circuits there was a variation. We can only say that in some circuits so much uniformity in the certifying of $10 seems to indicate an honest judicial construction, or practical construction of the statute. Of course it is no legal justification for any man to break the law on the ground that it is misconstrued, but it is sometimes an excuse. Want of intent to break the law is no defense in the trial or justification before the jury, but it will be a justification for suspension of sentence or a very small penalty.

In this case the penalty can not be reduced or sentence suspended. Conviction means the greatest penalty that can be inflicted upon a man. It is worse than death for a judge to be removed from office and disqualified. The House has a wide discretion in this matter. It may prosecute or not, as it will. Each man's conscience must decide whether, upon this one single question of the certificates of expenses, he feels himself bound to vote for the impeachment of Judge Swayne.

Mr. SHERLEY. Will the gentleman answer me one question? I want to ask you if anywhere at any time Judge Swayne offered, as an excuse for his drawing $10, that he had construed the law to entitle him to $10?

Mr. PARKER. Are you speaking from the record or not?

Mr. SHERLEY. Yes, sir; from the record.

Mr. PARKER. I do not know of any such thing in the record.

Mr. CHARLES B. LANDIS. Did he not offer to prove it?

Mr. PARKER. He offered to prove it.

Mr. SHERLEY. That it was his construction.

Mr. PARKER. He offered to prove it was other people's construction.

Mr. SHERLEY. Then this further——

Mr. PARKER. Will you let me complete my answer? Gentlemen are so eager in this matter that they will not allow a man to answer. There is no proof of this in the record. There is an offer to prove that $10 a day was pretty generally certified, and I take it that he meant to follow that up with proof that it is generally certified in some circuits without reference to the exact amount spent.

I know that his counsel since then has complained a little that the ruling out of the testimony in that regard made him think that Judge Swayne would not be allowed to testify on that subject, and therefore he did not offer it when he got Judge Swayne on the stand. I think I have fairly answered your question.

Mr. SHERLEY. Just one further question in this same connection. Do you believe, as a lawyer—do you believe that anyone contends—that any committee would hold incompetent testimony by a witness situated as Judge Swayne, not as to what construction others placed on a statute, but that he himself construed it in a given way?

Mr. PARKER. I only know what his counsel says.

Mr. WILLIAMS of Mississippi. Will the gentleman allow me to ask him a question?

Mr. PARKER. I yield to the gentleman from Mississippi.

Mr. WILLIAMS of Mississippi. Is it as a matter of fact true and does not the gentleman know that in the majority of the judicial districts of the United States it actually does cost the judges more than $10 a day, and therefore it is perfectly natural and proper they should certify to it, at least $10; and is not the gravamen of the charge here, not that he certified the amount at all, but that while certifying to $10, he actually spent less?

Mr. PARKER. I do not know how to answer that question. I do not claim to have knowledge of the expense of living throughout the United States. I do not know what your hotels charge, and I can not answer. The gravamen of the charge, of course, is, I take it, where the judge did not spend it.

Mr. WILLIAMS of Mississippi. These other men spend it.

Mr. PARKER. That may be true.

Mr. WILLIAMS of Mississippi. I think the other men did spend it. If you take the names, you will find that they were in the city districts.

Mr. PARKER. I have not the names. I think there are nineteen judges of the different circuits mentioned in the Treasury Department letter who certify $10 uniformly and seventeen who do not.

Mr. LIVINGSTON. I would like to correct a mistake, which has just been made on the floor by the gentleman from Iowa [Mr. LACEY].

Mr. PARKER. I am done, unless there are further questions.

APPENDIX A.

ABANDONED CHARGES.

The Hoskins bankruptcy, involving, as is claimed, $40,000 assets, was continued only because the bankrupt would not give a moderate bond of $5,000, and he used the opportunity to settle at a discount.

The Hoskins contempt went from term to term, not by order, but by agreement of attorneys, and young Hoskins killed himself in the depression caused by a prolonged spree.

Tunison, the alleged favorite of Judge Swayne, lost most of his cases before him.

Naturally these charges fell.

APPENDIX B.

THE LAW AS TO EXPENSES.

The law of 1896 (29 U. S. Stat., p. 451) appropriates in a sundry civil bill for payment "of reasonable expenses of travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such items shall be allowed the marshal in the settlement of his accounts with the United States."

Those of the judges who certify $10 obviously construe the word "expense" to include any loss or damage, as in the phrases "at the expense of health," "a joke at another's expense." Attendance out of the district, away from his home and office, is a loss and, in this sense, an expense to any judge in interfering with his management of family affairs and private business, and they seem to think this construction justified as a fair construction of the law.

The history of the legislation is as follows:

In 1850 (9 Stat., 442) judges could be detailed in case of sickness and disability, and the judge shall be allowed his reasonable expenses of travel to and from and of residence in such other district necessarily incurred by reason of such designation and appointment, and such expense shall, when certified by the clerk and district attorney of the judicial district within which such services shall have been performed, be paid by the marshal of such district and allowed him in his accounts with the United States.

In 1871 new salaries were provided for all judges (16 Stat. L., p. 495) and all travel abolished for judges, including the provision "it shall be the duty of such district judge as shall be for that purpose designated and appointed to hold the district or circuit court, as aforesaid, without any other compensation than his regular salary as established by law."

These provisions go into Revised Statutes with a special provision as to New York City for payment on a judge's certificate. By Revised Statutes, pages 596–597, the circuit judge could order the district judge to help in another district in the same circuit "without any other compensation than his regular salary, as established by law, except in the case provided in the next section," which provided that when this court was held in the southern district of New York "his expenses, not exceeding $10 per day, certified by him, shall be paid by the marshal of said district as part of the expenses of the court, and shall be allowed in the marshal's account."

In 1881 the payment for expenses was resumed (21 Stat. L., p. 454). "For expenses and fees of bailiffs, for payment of expenses of district judges who may be sent out of their districts in pursuance of law to hold a circuit or a district court, and for other miscellaneous expenses, * * * and so much of section 596 of the Revised Statutes as forbids the payment of expenses of district judges while holding court outside of their districts is hereby repealed." Under this act judges were paid upon itemized statements. (See Record, page 432, letter of E. G. Timme, auditor.)

In 1891, March 3, section 8 (Sup. to Rev. Stat., p. 904), a judge attending the circuit court of appeals "shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance not to exceed $10 a day, and such payment shall be allowed the marshal in the settlement of his accounts with the United States."

Thus, at appeal, a judge was paid on his simple certificate, and on other detail he had to file an itemized certificate.

In 1896 (29 Stat. L., p. 451) the sundry civil bill provided for payment, on certificate, "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his accounts with the United States."

Since that time the payment has been made without itemized accounts (Record, p. 432, Auditor's letter) of small payments made and incident to such travel and attendance. It is claimed that Judge Swayne rendered bills at the rate of $10 a day without reference to what he actually spent. It is proved that his board and travel of some of these visits did not amount to that sum. I am frank to say that the statute, in my opinion, is confined to expenses in the sense of money paid out, and does not extend to such expense as is involved in interference with other matters. But I am likewise bound to notice that it is claimed that some of the judges have been of the opinion that, including such interference, their expenses on attendance out of their districts would always be fairly above $10, and that numerous certificates have been so rendered. While ignorance of the law excuses no one, intent is a necessary part of the high crime or misdemeanor

which must be subject of impeachment, and if there be any such practice by respected judges it may be held to be a proof that they and this judge had honest intent. I believe that this practice is not warranted by law. But if such quasi judicial constructions have been given to the statute, in the absence of objection by the officers of the Treasury, or of public discussion which would have called judicial attention to the matter, I must agree that impeachment proceedings against any one judge should now be found upon this single ground. Members of the committee differ on this question, which must be determined by the House.

The SPEAKER. The House will be in order.

Mr. LIVINGSTON. I have permission of the gentleman——

Mr. PALMER. I yield to the gentleman from Georgia, for the purpose of making an explanation.

The SPEAKER. Has the gentleman from New Jersey yielded the floor?

Mr. PARKER. I have yielded the floor.

Mr. LIVINGSTON. I understood the gentleman from Iowa to say a moment ago that the Committee on Appropriations from 1896, when it originated, had regularly incorporated this same language in the bill. This language was put in the bill in 1896:

Reasonable expenses, not to exceed $10 a day.

Mr. LACEY. Reasonable expenses and attendance; those are the words, "and attendance."

Mr. LIVINGSTON. The point I want to make, Mr. Speaker, is this: That he charges, if I understand him correctly, that the Committee on Appropriations knowingly continued that language in the appropriation bill when the judges were violating the law.

Mr. LACEY. Oh, no.

Mr. LIVINGSTON. In other words, that they were charging $10 a day when their expenses were less. Now, if there was a single member of the Committee on Appropriations, Mr. Speaker, including yourself, that knew any such thing, I am not aware of it; and the gentleman is mistaken when he makes such a statement.

Mr. LACEY. I say the Appropriations Committee knew the construction put on it by the judges.

JUDICIAL SYSTEM IN CHINA AND KOREA.

The SPEAKER laid before the House the following message from the President of the United States; which was read, and, with the accompanying documents, ordered to be printed, and referred to the Committee on Foreign Affairs:

To the Senate and House of Representatives:

I transmit herewith, for the consideration of Congress, a report by the Secretary of State concerning the importance of reform in our extra-territorial judicial system in China and Korea, with accompanying papers, including a draft of an act providing for the establishment of a district court of the United States for China and Korea.

THEODORE ROOSEVELT.

THE WHITE HOUSE,
Washington, January 13, 1905.

BRIDGE ACROSS TENNESSEE RIVER, DECATUR, ALA.

Mr. RICHARDSON of Alabama. Mr. Speaker——

Mr. WILLIAMS of Mississippi. Mr. Speaker, I notice it is 15 minutes after 5 o'clock. I hope the motion to adjourn will be made.

Mr. PALMER. Mr. Speaker, I yield for a request by the gentleman from Alabama, and then I will move that the House adjourn.

The SPEAKER. The gentleman from Pennsylvania withholds the motion to adjourn. For what purpose does the gentleman from Alabama rise?

Mr. RICHARDSON of Alabama. I ask unanimous consent for the present consideration of the bill (H. R. 15567) to authorize the Decatur Transportation and Manufacturing Company, a corporation, to construct, maintain, and operate a bridge across the Tennessee River at or near the city of Decatur, Ala.

The SPEAKER. The gentleman from Alabama asks unanimous consent for the present consideration of a bill, the title of which will be reported by the Clerk.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

There was no objection.

The bill was read.

The following amendments, recommended by the Committee on Interstate and Foreign Commerce, were read, considered, and agreed to:

At the end of line 5, page 4, add a colon in place of the period and insert the following:

"*Provided*, That if the Decatur Transportation and Manufacturing Company should determine at any time to charge toll for passing over the bridge, a schedule of the charges shall be submitted to the Secretary of War for his approval, reduction, or refusal, and shall not go into effect until approved by him; and if any complaint is made at any time the Secretary of War shall have authority to reduce the toll as in his discretion he sees proper."

In line 8, page 4, after the first word "within," strike out the word "two" and insert the word "one;" and in the same line, on same page, after the second word "within," strike out the word "five" and insert the word "three."

The bill as amended was ordered to be engrossed and read a third time; and was accordingly read the third time, and passed.

On motion of Mr. RICHARDSON of Alabama, a motion to reconsider the last vote was laid on the table.

ISTHMIAN CANAL COMMISSION.

The SPEAKER laid before the House the following message from the President of the United States; which, with the accompanying documents, was ordered to be printed and referred to the Committee on Interstate and Foreign Commerce:

To the Senate and House of Representatives:

I transmit herewith the report of the Isthmian Canal Commission, accompanied by a letter of the Secretary of War, under whose supervision I have by Executive order placed the work of the Commission. I concur with the Secretary of War in the view that the present provision of law, by which the work of building the canal has to be done only through a body of seven members, is inelastic and clumsy, and I earnestly recommend a change, so that the President, who is charged with the responsibility of building the canal, may exercise greater discretion in the organization of the personnel through whom he is to discharge this duty. Actual experience has convinced me that it will be impossible to obtain the best and most effective service under the limitations prescribed by law. The general plans for the work must be agreed upon with the aid of the best engineers of the country, who should act as an advisory or consulting body. The consulting engineers should not be put on the Commission, which should be used only as an executive instrument for the executive and administrative work. The actual work of executing the general plans agreed upon by the Commission, after receiving the conclusions of the advising engineers, must be done by an engineer in charge, and we now have an excellent engineer. It is, in my judgment, inadvisable therefore to restrict the Executive's choice of Commissioners to representatives of the Engineer Corps of the Army or the Navy. The Commission should consist of five, or preferably of three, members, whose respective duties, powers, and salaries should be assigned to them by the President, and who should be placed under the member of the Cabinet whom the President desires. Of these men, the one appointed as administrator of the canal strip should also serve as minister to Panama.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *January 13, 1905.*

BRIDGE ACROSS THE RED RIVER OF THE NORTH.

Mr. STEENERSON. Mr. Speaker, I ask unanimous consent——

Mr. WILLIAMS of Mississippi. Mr. Speaker, I will ask the gentleman to yield to me for a moment, reserving the right to object. I want to make a statement.

The SPEAKER. The request has not yet been submitted. The gentleman from Minnesota asks unanimous consent for the present consideration of a bill, the title of which will be reported by the Clerk.

The Clerk read the title of the bill (H. R. 16720) permitting the building of a railroad bridge across the Red River of the North from a point on section 6, township 154 north, range 50 west, Marshall County, Minn., to a point on section 36, township 155 north, range 51 west, Walsh County, N. Dak.

Mr. WILLIAMS of Mississippi. Now, Mr. Speaker, reserving the right to object, I wish to make a statement. I wish to do it because of the situation into which I find we are getting. It is becoming a habit to consider requests for unanimous consent after 5 o'clock. One such request has been granted to a gentleman on this side of the Chamber this evening. It would therefore be invidious and unfair to object to one upon the other side, but I want to give notice that hereafter I shall object to requests for unanimous consent after 5 o'clock.

The SPEAKER. The Chair will state that for the accommodation of Members he has been in the habit of presenting to the House requests for unanimous consent for the consideration of certain classes of bills. It is in the power of any gentleman to object at any time. The gentleman from Pennsylvania [Mr. PALMER] withholding his motion to adjourn, the Chair recognized one gentleman and then another. Is there objection?

There was no objection.

The Clerk read the bill.

The following amendments, recommended by the Committee on Interstate and Foreign Commerce, were read:

Strike out all after the enacting clause and insert:

That the consent of Congress is hereby granted to the Minneapolis, St. Paul and Sault Ste. Marie Railway Company, a railway corporation organized under the laws of the States of Michigan, Wisconsin, Minnesota, and North Dakota, its successors or assigns, to build a railway bridge across the Red River of the North, suitable to the interests of navigation, from a point on section 6, township 154 north, range 50 west, Marshall County, Minn., to a point on section 36, township 155 north, range 51 west, Walsh County, N. Dak.: *Provided*, That drawings showing the plans and location of said bridge and appurtenant works shall be submitted to the Chief of Engineers and the Secretary of War for approval, and until approved by them the construction of such bridge shall not be commenced: *And provided further*, That said Minneapolis, St. Paul and Sault Ste. Marie Railway Company, its successors or assigns, shall not deviate from such plans after such approval, either before or after the completion of the said bridge, unless the modification of said plans shall have previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War; and any changes in said bridge which the Secretary of War may at any time order in the interest of navigation shall be promptly made by said company at its own expense.

SEC. 2. That in case any litigation arises from the building of said bridge or from the obstruction of said river by said bridge, cases may be tried in the proper courts, as now provided for that purpose in the States of Minnesota and North Dakota and in the courts of the United

States: *Provided*, That nothing in this act shall be so construed as to repeal or modify any of the provisions of law now existing in reference to the protection of the navigation of rivers, or to exempt said bridge from the operation of same.

SEC. 3. That all railroad companies desiring the use of said bridge shall have and be entitled to equal rights and privileges relative to the passage of railway trains over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of disagreement between the parties in regard to the compensation to be paid or the conditions to be observed all matters at issue shall be determined by the Secretary of War.

SEC. 4. That any bridge built under this act and subject to its limitations shall be a lawful structure, and shall be recognized and known as a post route, upon which no higher charge shall be made for the transmission of mails and the troops and munitions of war of the United States over the same than the rate per mile paid for the transportation over the railroad or approaches leading to the said bridge; and it shall enjoy the rights and privileges of other post-roads in the United States, and equal privileges in the use of said bridge shall be granted to all telegraph and telephone companies, and the United States shall have the right of way across said bridge and its approaches for postal telegraph and telephone purposes.

SEC. 5. That this act shall be null and void unless the bridge herein authorized be commenced within one year and completed within two years from the date of approval of this act.

SEC. 6. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The SPEAKER. The Chair may be indulged by the House for a single statement. There may be good reasons why bridge bills should be separately considered. During the service of the Chair as a Member of the House he has no recollection of any bridge bill having passed except upon the recommendation of the Secretary of War, which is practically the recommendation of the Chief of Engineers, and the Chair has given some attention to this matter. There may be some good reason why a general law should not be passed vesting the discretion in the Secretary of War to grant the privilege, with proper safeguards, leaving it in the power of Congress to take it away. There are many of these bills. They come up almost as a daily matter. They take something of time, and something of space upon the RECORD as well as the Journal of the House. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

On motion of Mr. STEENERSON, a motion to reconsider the last vote was laid on the table.

Mr. PALMER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

Accordingly (at 5 o'clock and 30 minutes p. m.) the House adjourned.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the Secretary of War, transmitting petitions from the Philippine Islands for a reduction of the tobacco tariff—to the Committee on Ways and Means, and ordered to be printed.

A letter from the Secretary of the Treasury, transmitting a copy of a communication from the Secretary of War submitting supplemental estimates of appropriation for the service of the Department—to the Committees on Military Affairs and Appropriations, and ordered to be printed.

A letter from the Secretary of the Treasury, transmitting a copy of a communication from the Secretary of War submitting an estimate of appropriation for proving grounds, Sandy Hook—to the Committee on Appropriations, and ordered to be printed.

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the findings filed by the court in the case of the First Baptist Church at Jefferson City, Tenn., against The United States—to the Committee on War Claims, and ordered to be printed.

A letter from the president of the Chesapeake and Potomac Telephone Company, transmitting the report for the year 1904—to the Committee on the District of Columbia, and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. NEEDHAM, from the Committee on the Public Lands, to which was referred the bill of the House (H. R. 17345) to exclude from the Yosemite National Park, California, certain lands therein described, and to attach and include the said lands in the Sierra Forest Reserve, reported the same without amendment, accompanied by a report (No. 3538); which said bill and report were referred to the Committee of the Whole House on state of the Union.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, committees were discharged from the consideration of bills of the following titles; which were thereupon referred as follows:

A bill (H. R. 15613) for the better protection against fire on steam vessels carrying passengers and for the protection of life thereon—Committee on Interstate and Foreign Commerce discharged, and referred to the Committee on the Merchant Marine and Fisheries.

A bill (H. R. 16789) for the prevention of fire from electrical apparatus on steam vessels carrying passengers—Committee on Interstate and Foreign Commerce discharged, and referred to the Committee on the Merchant Marine and Fisheries.

A bill (H. R. 17689) granting a pension to Priscilla Schroeder—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. BABCOCK: A bill (H. R. 17703) to increase the limit of cost for the purchase of site and the erection of a public building at Baraboo, Wis.—to the Committee on Public Buildings and Grounds.

By Mr. SHEPPARD: A bill (H. R. 17704) amending section 17, chapter 296, United States Statutes at Large, volume 14, so as to provide that members of Congress using free transportation to and from Congress shall not receive mileage—to the Committee on Appropriations.

By Mr. PEARRE: A bill (H. R. 17705) granting a pension of $30 per month to all Union soldiers who served ninety days or more and were honorably discharged and who are or hereafter may become 70 years of age—to the Committee on Invalid Pensions.

By Mr. KALANIANAOLE: A bill (H. R. 17706) to provide for the building of a new light-house and range lights at Honolulu Harbor, Territory of Hawaii—to the Committee on Interstate and Foreign Commerce.

Also, a bill (H. R. 17707) for the establishing of a light-house at Makapuu Point, on the island of Oahu, Territory of Hawaii—to the Committee on Interstate and Foreign Commerce.

By Mr. DALZELL: A bill (H. R. 17708) to amend section 3646, Revised Statutes of the United States, as amended by act of February 16, 1885—to the Committee on Ways and Means.

By Mr. CURTIS: A bill (H. R. 17709) granting to the Choctaw, Oklahoma and Gulf Railroad Company the power to sell and convey to the Chicago, Rock Island and Pacific Railway Company all the railway, property, rights, franchises, and privileges of the Choctaw, Oklahoma and Gulf Railroad Company, and for other purposes—to the Committee on Indian Affairs.

By Mr. SOUTHARD: A bill (H. R. 17710) providing for the purchase of a site and the erection of a public building at Toledo, Ohio—to the Committee on Public Buildings and Grounds.

By Mr. LITTLE: A bill (H. R. 17711) to extend the western boundary line of the State of Arkansas—to the Committee on the Judiciary.

By Mr. VAN DUZER: A bill (H. R. 17712) providing for the disposal of lands acquired under the provisions of the reclamation act—to the Committee on Irrigation of Arid Lands.

By Mr. SMITH of Illinois: A bill (H. R. 17733) to amend section 2 of the act entitled "An act making appropriations for the payments of the arrears of pensions granted by act of Congress approved January 25, 1879, and for other purposes," approved March 3, 1879—to the Committee on Invalid Pensions.

By Mr. PEARRE: A resolution (H. Res. 420) referring to the Court of Claims the bill H. R. 6066—to the Committee on War Claims.

Also, a resolution (H. Res. 421) referring to the Court of Claims the bill H. R. 4334—to the Committee on War Claims.

Also, a resolution (H. Res. 422) referring to the Court of Claims the bill H. R. 4346—to the Committee on War Claims.

Also, a resolution (H. Res. 423) referring to the Court of Claims the bill H. R. 12283—to the Committee on War Claims.

Also, a resolution (H. Res. 424) referring to the Court of Claims the bill H. R. 6983—to the Committee on War Claims.

Also, a resolution (H. Res. 425) referring to the Court of Claims the bill H. R. 6979—to the Committee on War Claims.

Also, a resolution (H. Res. 426) referring to the Court of Claims the bill H. R. 4335—to the Committee on War Claims.

Also, a resolution (H. Res. 427) referring to the Court of Claims the bill H. R. 7893—to the Committee on War Claims.

Also, a resolution (H. Res. 428) referring to the Court of Claims the bill H. R. 9433—to the Committee on War Claims.

Also, a resolution (H. Res. 429) referring to the Court of Claims the bill H. R. 4340—to the Committee on War Claims.

Also, a resolution (H. Res. 430) referring to the Court of Claims the bill H. R. 4332—to the Committee on War Claims.

Also, a resolution (H. Res. 431) referring to the Court of Claims the bill H. R. 9431—to the Committee on War Claims.

Also, a resolution (H. Res. 432) referring to the Court of Claims the bill H. R. 8228—to the Committee on War Claims.

Also, a resolution (H. Res. 433) referring to the Court of Claims the bill H. R. 11551—to the Committee on War Claims.

Also, a resolution (H. Res. 434) referring to the Court of Claims the bill H. R. 4341—to the Committee on War Claims.

Also, a resolution (H. Res. 435) referring to the Court of Claims the bill H. R. 13261—to the Committee on War Claims.

Also, a resolution (H. Res. 436) referring to the Court of Claims the bill H. R. 8229—to the Committee on War Claims.

Also, a resolution (H. Res. 437) referring to the Court of Claims the bill H. R. 4343—to the Committee on War Claims.

Also, a resolution (H. Res. 438) referring to the Court of Claims the bill H. R. 4338—to the Committee on War Claims.

Also, a resolution (H. Res. 439) referring to the Court of Claims the bill H. R. 4342—to the Committee on War Claims.

Also, a resolution (H. Res. 440) referring to the Court of Claims the bill H. R. 12200—to the Committee on War Claims.

Also, a resolution (H. Res. 441) referring to the Court of Claims the bill H. R. 4336—to the Committee on War Claims.

Also, a resolution (H. Res. 442) referring to the Court of Claims the bill H. R. 4333—to the Committee on War Claims.

Also, a resolution (H. Res. 443) referring to the Court of Claims the bill H. R. 4339—to the Committee on War Claims.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. BADGER: A bill (H. R. 17713) granting an increase of pension to Andrew F. Murray—to the Committee on Invalid Pensions.

By Mr. BIRDSALL: A bill (H. R. 17714) granting an increase of pension to Bumel Wickham—to the Committee on Invalid Pensions.

By Mr. BONYNGE: A bill (H. R. 17715) granting an increase of pension to Samuel A. Statton—to the Committee on Invalid Pensions.

By Mr. COWHERD: A bill (H. R. 17716) granting an increase of pension to William B. White—to the Committee on Invalid Pensions.

By Mr. GIBSON: A bill (H. R. 17717) granting a pension to William H. Shillings—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17718) granting an increase of pension to Pryor L. Draper—to the Committee on Invalid Pensions.

By Mr. HAMILTON: A bill (H. R. 17719) granting a pension to John M. Hoisington—to the Committee on Invalid Pensions.

By Mr. HAMLIN: A bill (H. R. 17720) granting a pension to Andrew Ballou—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17721) granting a pension to Mary J. Lunceford—to the Committee on Invalid Pensions.

By Mr. HILDEBRANT: A bill (H. R. 17722) for the relief of Elizabeth A. Deuell—to the Committee on War Claims.

By Mr. HILL of Mississippi: A bill (H. R. 17723) for the relief of W. F. Lockhart—to the Committee on War Claims.

Also, a bill (H. R. 17724) for the relief of the estate of Solomon Smith, deceased—to the Committee on War Claims.

Also, a bill (H. R. 17725) for the relief of W. F. Lockhart—to the Committee on War Claims.

By Mr. HOPKINS: A bill (H. R. 17726) granting an increase of pension to John W. Puckett—to the Committee on Invalid Pensions.

By Mr. KEHOE: A bill (H. R. 17727) granting an increase of pension to William Crawford—to the Committee on Pensions.

By Mr. LEVER: A bill (H. R. 17728) for the relief of the legal representatives of Naloti Biraghi—to the Committee on War Claims.

Also, a bill (H. R. 17729) granting a pension to John N. Long—to the Committee on Invalid Pensions.

By Mr. LITTLE: A bill (H. R. 17730) for the relief of Charles W. Russey, of Sevier County, Ark.—to the Committee on Claims.

By Mr. REID: A bill (H. R. 17731) granting an increase of pension to William Stewart—to the Committee on Pensions.

By Mr. SIMS: A bill (H. R. 17732) for the relief of Jefferson Franks—to the Committee on Military Affairs.

By Mr. TOWNSEND: A bill (H. R. 17734) granting a pension to Susan M. Salsbury—to the Committee on Invalid Pensions.

By Mr. VAN VOORHIS: A bill (H. R. 17735) granting an increase of pension to John T. Waxler—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17736) granting an increase of pension to James H. Larimer—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17737) granting an increase of pension to John F. Bonnell—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17738) granting an increase of pension to George E. Shoemaker—to the Committee on Invalid Pensions.

By Mr. WACHTER: A bill (H. R. 17739) granting a pension to Faldean Wealland—to the Committee on Pensions.

By Mr. WILLIAMS of Illinois: A bill (H. R. 17740) granting an increase of pension to Sarah Burks—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17741) to remove the charge of desertion from the military record of Hiram Hutchcroft—to the Committee on Military Affairs.

By Mr. McLAIN: A bill (H. R. 17742) for the relief of William R. Beach—to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER: Petition of the International Typographical Union, of Indianapolis, Ind., for legislation favoring a higher rate of pay for the United States Marine Band—to the Committee on Naval Affairs.

Also, petition of the Colorado Federation of Women's Clubs, favoring legislation against destruction of the mammoth trees of California—to the Committee on the Public Lands.

By Mr. AIKEN: Papers to accompany bill for the relief of W. T. Parker—to the Committee on War Claims.

By Mr. COOPER of Wisconsin: Petition of the Farmers' Association of Ponchatoula, La., against unjust discrimination in freight rates—to the Committee on Interstate and Foreign Commerce.

By Mr. CRUMPACKER: Petition of the Republican Club of Evansville, Ind., for enforcement of the fourteenth amendment to the Federal Constitution—to the Committee on the Census.

Also, petition of citizens of Hanna, Ind., favoring bill H. R. 13778—to the Committee on Interstate and Foreign Commerce.

By Mr. DALZELL: Petition of the Pennsylvania State Grange, favoring bill H. R. 8678—to the Committee on Agriculture.

By Mr. DAVIS of Minnesota: Papers to accompany bill H. R. 16735, granting an increase of pension to John Hoock—to the Committee on Invalid Pensions.

By Mr. FITZGERALD: Petition of Colorado beet-sugar manufacturers, opposing reduction of duties on raw and refined sugar—to the Committee on Ways and Means.

By Mr. FULLER: Petition of New England Tobacco Growers' Association, against any change in rates of duty on tobacco—to the Committee on Ways and Means.

Also, petition of Peter Von Schaack & Sons, favoring passage of the Quarles-Cooper bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Rockford (Ill.) Manufacturing Company, favoring passage of bill H. R. 6273—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Union Furniture Company, of Rockford, Ill., favoring the Quarles-Cooper bill—to the Committee on Interstate and Foreign Commerce.

By Mr. HILDEBRANT: Paper to accompany bill for relief of Elizabeth A. Denell—to the Committee on Invalid Pensions.

By Mr. HINSHAW: Paper to accompany bill for relief of John D. McGahan—to the Committee on Invalid Pensions.

By Mr. HITT: Petition of Hibbard, Spencer, Bartlett & Co., of Chicago, asking legislation governing freight rates in line of recommendations in President's message—to the Committee on Interstate and Foreign Commerce.

Also, petition of Hibbard, Spencer, Bartlett & Co., asking passage of bill H. R. 5600, by Mr. RUSSELL—to the Committee on Interstate and Foreign Commerce.

By Mr. JENKINS: Petition of the Progressive League of Chippewa Falls, Wis., against reduction of duties on sugar and tobacco from the Philippine Islands—to the Committee on Ways and Means.

By Mr. LACEY: Petition of Council Bluffs Commercial Club, favoring the Cooper-Quarles bill—to the Committee on Interstate and Foreign Commerce.

By Mr. NEEDHAM: Petition of the Los Angeles Chamber of Commerce, against enactment of a law taxing brandy used in fortifying sweet wines—to the Committee on Ways and Means.

Also, petition of the California Club, favoring legislation for preservation of big trees of California—to the Committee on Agriculture.

Also, petition of the Board of Trade of San Francisco, Cal., for an additional tug boat for revenue service—to the Committee on Interstate and Foreign Commerce.

By Mr. PUJO: Resolution of the general assembly of Louisiana, relative to slack-water navigation in Bayou Macon and Bœuf River, Louisiana—to the Committee on Rivers and Harbors.

Also, resolution of the general assembly of the State of Louisiana, relative to improvement of Sabine River, Louisiana—to the Committee on Rivers and Harbors.

Also, resolution of the general assembly of the State of Louisiana, relative to locks on Bayou Plaquemines, Louisiana—to the Committee on Rivers and Harbors.

Also, resolution of the general assembly of the State of Louisiana, relative to divorcing the Mississippi and Atchafalaya rivers, Louisiana—to the Committee on Rivers and Harbors.

By Mr. RICHARDSON of Alabama: Paper to accompany bill granting pension to Rhoda C. O'Neil—to the Committee on Invalid Pensions.

By Mr. ROBINSON of Indiana: Petition of Division No. 153, Brotherhood of Locomotive Engineers, of Garrett, Ind., in favor of bill H. R. 7041—to the Committee on Interstate and Foreign Commerce.

By Mr. RYAN: Petition of the post commander of the Army and Navy Union, favoring the naval retirement bill—to the Committee on Naval Affairs.

By Mr. SNOOK: Papers to accompany bill H. R. 4385, to increase pension of Thomas Thompson—to the Committee on Invalid Pensions.

By Mr. VAN VOORHIS: Papers to accompany bill for relief of George E. Shoemaker, of Zanesville, Ohio—to the Committee on Invalid Pensions.

Also, papers to accompany bill for the relief of John F. Bonnell—to the Committee on Invalid Pensions.

Also, papers to accompany bill for the relief of James H. Larimer—to the Committee on Invalid Pensions.

Also, papers to accompany bill for relief of John T. Waxlin—to the Committee on Invalid Pensions.

By Mr. YOUNG: Petition of Lake Superior Subdivision of the Brotherhood of Locomotive Engineers, favoring legislation preventing anyone becoming an engineer who has not served three years as a locomotive fireman—to the Committee on Interstate and Foreign Commerce.

Also, petition of Lake Superior Subdivision of Brotherhood of Locomotive Engineers, favoring legislation against excessive hours for engineers—to the Committee on Interstate and Foreign Commerce.

SENATE.

SATURDAY, *January 14, 1905.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. NELSON, and by unanimous consent, the further reading was dispensed with.

FINDINGS OF THE COURT OF CLAIMS.

The PRESIDING OFFICER (Mr. PERKINS) laid before the Senate a communication from the chief clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of the Methodist Church of Kossuth, Miss., *v.* The United States; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

ELECTORAL VOTES.

The PRESIDING OFFICER laid before the Senate communications from the Secretary of State, transmitting the final ascertainment of electors for President and Vice-President for the States of North Dakota and Colorado; which, with the accompanying papers, were ordered to be filed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 14623) to amend an act approved July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," and to amend an act approved March 8, 1902, entitled "An act temporarily to provide revenue for the Philippine Islands, and for other purposes," and to amend an act approved March 2, 1903, entitled "An act to establish a standard of value and to provide for a coinage system in the Philippine Islands," and to provide for the more efficient administration of civil government in the Philippine Islands, and for other purposes, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. COOPER of Wisconsin, Mr. TAWNEY, Mr. CRUMPACKER, Mr. JONES of Virginia, and Mr. MADDOX managers at the conference on the part of the House.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

H. R. 13772. An act to amend section 858 of the Revised Statutes of the United States;

H. R. 16567. An act to authorize the Decatur Transportation and Manufacturing Company, a corporation, to construct, maintain, and operate a bridge across the Tennessee River at or near the city of Decatur, Ala.; and

H. R. 16720. An act permitting the building of a railroad bridge across the Red River of the North from a point on section 6, township 154 north, range 50 west, Marshall County, Minn., to a point on section 36, township 155 north, range 51 west, Walsh County, N. Dak.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills and joint resolutions, and they were thereupon signed by the Presiding Officer:

S. 3728. An act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the district of Alaska, and for other purposes;

H. R. 1513. An act for the relief of the estate of George W. Saulpaw;

H. R. 6351. An act to pay J. B. McRae $99 for services as hospital steward, etc.;

H. R. 15606. An act to authorize the county of Itawamba, in the State of Mississippi, to construct a bridge across the Tombigbee River near the town of Fulton, in the said county and State;

H. R. 15810. An act to authorize Caldwell Parish, La., to construct a bridge across the Ouachita River;

H. R. 15981. An act to amend an act entitled "An act to authorize the Pearl and Leaf Rivers Railroad Company to bridge Pearl River, in the State of Mississippi;"

S. R. 24. Joint resolution authorizing the Secretary of War to receive for instruction at the Military Academy at West Point Luis Bográn H., of Honduras; and

S. R. 78. Joint resolution authorizing the Secretary of War to receive for instruction at the Military Academy at West Point Frutos Tomás Plaza, of Ecuador.

CIVIL GOVERNMENT IN THE PHILIPPINES.

Mr. LODGE. I ask that the Philippine bill, which has just come over from the House, may be laid before the Senate.

The PRESIDING OFFICER laid before the Senate the action of the House of Representatives disagreeing to the amendment of the Senate to the bill (H. R. 14623) to amend an act approved July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," and to amend an act approved March 8, 1902, entitled "An act temporarily to provide revenue for the Philippine Islands, and for other purposes," and to amend an act approved March 2, 1903, entitled "An act to establish a standard of value and to provide for a coinage system in the Philippine Islands," and to provide for the more efficient administration of civil government in the Philippine Islands, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. LODGE. I move that the Senate accede to the request of the House for a conference.

The motion was agreed to.

By unanimous consent, the Presiding Officer was authorized to appoint the conferees on the part of the Senate, and Mr. LODGE, Mr. HALE, and Mr. CULBERSON were appointed.

PETITIONS AND MEMORIALS.

The PRESIDING OFFICER (for Mr. FRYE) presented a memorial of the United Confederate Veterans, remonstrating against the adoption of certain amendments to the bill providing for the care and preservation of the graves of the Confederate dead now in the various cemeteries in the Northern States; which was referred to the Committee on Military Affairs.

Mr. CULLOM presented a memorial of sundry citizens of Duquoin, Ill., and a memorial of sundry citizens of Shelby and Effingham counties, Ill., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

He also presented a petition of Viola Lodge, No. 350, Brotherhood of Locomotive Firemen, of Mattoon, Ill., and a petition of Robinson Division, No. 78, Order of Railway Conductors,